



Georgia Procurement Manual

Department of Administrative Services State Purchasing Division

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A handwritten signature in black ink, appearing to read "Brad Douglas".

Brad Douglas, Commissioner

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Chapter 1: General Provisions

Section 1: Purpose and Application

1.1 Purpose

The underlying purposes and policies of the Georgia Procurement Manual (hereinafter “GPM” or the “Manual”) are to:

1. Simplify and clarify the law governing procurement by the State of Georgia.
2. Permit the continued development of centralized procurement policies and practices.
3. Make as consistent as possible the procurement regulations among the various state agencies.
4. Provide for increased public confidence in the procedures followed in public procurement.
5. Ensure the fair and equitable treatment of all persons who deal with the procurement system of Georgia.
6. Provide increased economy in state procurement activities, maximize to the fullest extent possible the purchasing value of public funds; obtain in a cost-effective and responsive manner the materials, services, and construction required by state agencies in order for those agencies to better serve Georgia's businesses and residents.
7. Foster effective broad-based competition within the free enterprise system.
8. Provide safeguards for the maintenance of a procurement system of quality and integrity.

1.2 Applicability and Use of the GPM

This GPM applies only to procurements initiated after February 1, 2003. The Manual will supersede the Agency Procurement Manual (APM) and any revisions to the APM issued prior to the effective date of the GPM. Solicitations publicly issued prior to the effective date of the GPM will be governed by the APM.

The GPM is the primary source of reference for the Agency Procurement Officer (hereinafter “APO”). The APO should use the GPM when encountering any purchasing questions or problems concerning the procurement process.

1.3 Requirement of Good Faith

This GPM requires all parties involved in the negotiation, performance, or administration of Georgia contracts to act in good faith.

Section 2: Purchasing Laws and Regulations

2.1 Official Code of Georgia (O.C.G.A.) Governing Legal Authority

The purpose of this section is to provide reference to the legal authority for purchasing in the State of Georgia.

1. Laws concerning the Department of Administrative Services (hereinafter “DOAS”) procurement process in general may be found in the *Official Code of Georgia Annotated* (hereinafter “O.C.G.A.”) Title 50, Chapter 5, Article 3. The regulations set forth in this Manual are established pursuant to the DOAS authority under O.C.G.A. 50-5-54.
2. The APO should be familiar with all current laws governing purchases in order to assure that the legal requirements with respect to agency procurement activities are met. The pertinent laws that govern State purchases are generally set forth in O.C.G.A., Section 50-5-50 through Section 50-5-81. In addition, the published opinions of the Attorney General contain legal interpretations of the purchasing laws, which have the weight of the law in guiding State purchases. The State Purchasing Division (hereinafter “State Purchasing” or “SPD”) bases its operating policies and procedures upon the law and the opinions of the Attorney General.
3. State Purchasing does not attempt to render legal opinions for agencies. However the SPD will assist the APO in obtaining legal advice with regard to State purchases from the Attorney General where needed. Any such request should be addressed in writing to the State Purchasing Division Assistant Commissioner (hereinafter “SPDAC”).

2.2 Official Code of Georgia (O.C.G.A.) Governing Administrative Authority

The purpose of this section is to provide reference to the governing administrative authority for purchasing in the State of Georgia. Although every effort has been taken to assure the accuracy of the material presented, it is not intended or represented to be the official record of the laws and regulations of the State of Georgia. True and correct copies of the statutes of this State are found in the Official Code of Georgia. If any information in this manual is inconsistent with the O.C.G.A., the Code controls.

1. The APO should be familiar with the rules and regulations governing purchases as issued by the SPDAC.
2. The operating policies and procedures contained in this Manual are intended to comprise the body of rules and regulations pertinent to State purchases.
3. The SPDAC will issue procedural and informational guidelines and instructions in the form of Official Memorandums. These guidelines and instructions may result in revisions to the GPM.
4. Questions and clarifications concerning the GPM should be submitted to the SPD, Compliance and Standards Manager.

2.3 Deviations

A deviation may be deemed necessary for circumstances in which the prescribed policies, procedures and provisions are not totally appropriate for the development of a new technique or approach, or for specific contractual situations. The term “deviation” includes:

1. The issuance and/or use of any policy, procedure, provision, or instruction of any kind at any stage of the procurement process, which is inconsistent with a policy, procedure, or provision, set forth in the GPM or provision directive governed by state agencies and others subject to the Purchasing Act.
2. The use of a clause or provision covering the same subject matter as a prescribed clause or provision, or the modification or omission of a prescribed clause or provision.

To maintain uniformity to the maximum extent possible, deviations should be kept to a minimum. It is the responsibility of the APO or designee to request a deviation. A request for approval of any deviation shall be in writing to the SPDAC. The request shall explain the nature of the deviation, provide reasons why a deviation is necessary, and explain why it is in the best interest of the State of Georgia to grant the deviation. The SPDAC will review the deviation and determine whether the request can be approved. The deviation request and the action taken shall be documented in the contract file.

2.4 Duties and Powers of the State Auditor

It is among the duties and powers of the State Auditor to call special attention to any illegal, improper or unnecessary expenditures, and all inaccuracies, irregularities and shortages, and make specific recommendations for future avoidance. It is the responsibility of the APO to determine that the Agency's purchase requests abide by the rulings of the State Auditor.

2.5 Purchases Contrary to Purchasing Rules

A purchase that is contrary to the rules and regulations established by State Purchasing shall be void and of no effect.

Section 3: Public Access to Procurement Information

3.1 Open Records Act

1. All public records of an agency are subject to inspection under the provisions of the Open Records Act. If the Agency receives a request for a record or a procurement file, the Agency must allow inspection unless the records are excluded from the Act. Public records must be made available for inspection or copying within three (3) business days of the receipt of an open records request. Where responsive records exist but are not available within three (3) business days of the receipt of an open records request, the Agency must provide a written

description of such records, together with a timetable for their inspection and copying, within three (3) business days of the request.

2. The agency may designate a person to respond to the request; however, the time frame for responding to the open records request begins at the time that the Agency receives the request. A state employee must be present during the time of onsite inspection of records.
3. Agencies may charge the requestor a reasonable amount for copying, administrative and research costs.
4. The Agency will be responsible for handling open record requests where the solicitation was developed by the Agency. Therefore, the record request should not be forwarded to the SPD unless the SPD processed the solicitation.

3.2 Public Inspection

For every solicitation, the name of the successful offeror shall be made public upon issuance of the Notice of Intent to Award and upon contract award for all solicitations \$100,000.00 or more. For every solicitation, the name of the successful offeror shall be made public upon contract award for all solicitations \$5,000.00 or more, but less than \$100,000.00. The names of all offerors whose bids/proposals were rejected and a statement giving reasons for the rejection shall also be published. Within one day after the Notice of Intent to Award is issued and within one day after contract award, this information should be on public display in the department's office or on GPR so it can be easily seen by the public for solicitations \$100,000.00 or more.

Section 4: Web Site Information

This section lists the information that is available on the State Purchasing web site, which is located at statepurchasing.doas.georgia.gov.

4.1 Georgia Procurement Registry

Government buyers who are registered in the system can post bids and other procurement opportunities. Vendors can review a list of current solicitation opportunities. In addition to solicitation opportunities, vendors can also review all awards issued for the current and previous fiscal year.

4.2 Vendor Registration

Vendors can obtain information about the vendor registration process and register to do business with the State of Georgia online.

4.3 NIGP Codes – Lists and Searches

State Purchasing began using the National Institute of Government Purchasing (NIGP) commodity codes in 1999 to bring purchasing procedures into greater

conformity with national standards. The DOAS web site includes information on how to search by keyword and by vendors registered by NIGP code.

4.4 Purchasing Contracts

An index listing of current statewide contracts including links to contract information.

4.5 State Purchasing Staff Directory

A list of State Purchasing Division contacts with e-mail addresses.

4.6 State Agency Procurement Contacts

A list of Agency Purchasing Officers (APOs) and their contact information.

4.7 Vendor Tools

Includes detailed information about the state's procurement process and requirements for vendors.

4.8 Agency Tools

Manuals, guides, forms, and templates that govern the State's Procurement Process.

4.9 Mandatory Source

A list of the procurement sources regulated by the Georgia Code and a link to the web site for each source.

4.10 Related Web Sites

The following web sites provide additional information:

- DOAS: doas.georgia.gov
- Governor's Small Business Center: <http://www.georgia.org/gsbcc/index.html>
- State or Federal Surplus: <http://gasurplus.doas.state.ga.us/apps/gss/surplus.nsf>
- Georgia Correctional Industries: www.gci-ga.com
- Georgia Enterprises: www.georgiaenterprises.com
- NIGP: www.nigp.org
- Official Code of Georgia (This is the Georgia web page for laws and regulations where you can search by code number.):
http://www.georgia.gov/00/channel/0,2141,4802_5031,00.html
- National Contract Management Association: <http://www.ncmahq.org/>

Chapter 2: Procurement Organization

Section 1: Authority of DOAS, State Purchasing Division

1.1 Purchases by State Governmental Entities

Through the State Purchasing Division, DOAS has the authority and is the unit of state government charged with the responsibility for the establishment of contracts, leases, purchase orders or other agreements for the procurement of supplies, materials, equipment, services, and construction, and for overseeing statewide and multi-agency contracts. All state offices, agencies, departments, boards, commissions, institutions, and other entities of the state are required to purchase through DOAS unless specifically exempted by statute or regulation.

1.2 Purchases by Local Political Subdivisions

Local political subdivisions, including counties, municipalities, and school boards are authorized by state law to purchase their supplies, materials, and equipment through DOAS if they so desire. Purchases pursuant to this authorization may take the form of one-time open market purchases or statewide contracts specifically open to use by local political subdivisions. All products offered by bidders/offers pursuant to statewide contracts may be offered to local political subdivisions as well as state agencies at the option of the bidder/offeror.

Section 2: Authority and Duties of Procurement Officials

2.1 DOAS Commissioner

The Commissioner is the Chief Procurement Officer of the State and is authorized to adopt rules and regulations as may be required to carry out the procurement, management, control, and disposal of any and all supplies and services procured by the State of Georgia.

2.2 State Purchasing Division Assistant Commissioner

The SPDAC is the Commissioner's designee.

2.3 Agency Procurement Officer

1. The Commissioner may delegate authority to a designee or to any department, agency, or official. The APO has the authority to procure goods and services within their Delegated Purchasing Authority (DPA). The responsibilities of the APO include but are not limited to:
 - a. Maintain all necessary Agency procurement records.

- b. Provide information to State Purchasing regarding purchasing transactions as requested.
 - c. Provide methods to assure all purchasing laws, rules, regulations and procedures are observed within the Agency.
 - d. Ensure that the ethics of public procurement are being maintained.
- 2. The APO must prioritize purchases of commodities, goods and services in the order listed in Chapter 3, Section 1.1, Policy, of the GPM.
 - 3. The APO has the responsibility to prepare and submit to the SPD, agency requirements for all materials and services, which exceed the Agency's DPA.

Section 3: Exemptions from State Purchasing Requirements

Listed below are the entities and specific categories of purchasing that are exempt from State Purchasing requirements:

- 1. Government Entities
 - a. All governmental authorities.
 - b. All legislative and judicial branches.
- 2. Government Entities with Partial Exemptions
 - a. Construction and/or Public Works Contracts for several public authorities, the Board of Regents and the Department of Transportation. This does not apply to purchasing construction or building materials.
 - b. Department of Education's purchase of school textbooks.
 - c. Space Management for real estate administration.
 - d. Department of Defense for purchase and issuance of military property.
 - e. Technical instruments and supplies and technical books and other printed matter on technical subjects; also, manuscripts, maps, books, pamphlets, and periodicals for the use of the State Library or any other library in the state supported by state funds; also services.
 - f. Livestock for slaughter and perishable articles, such as fresh vegetables, fresh meat, fish and oysters, butter, eggs, poultry and milk.
 - g. Emergency supplies of drugs, chemicals and sundries, dental supplies and equipment.
- 3. Services and Other Exemptions
 - a. Services, which are limited to those services which are defined by a statute as a "profession" or "professional service". For example, the following services are statutorily defined as "professions" or "professional services": certified public accountancy, actuarial services, architecture, landscape architecture, interior design, licensed or accredited appraisers or licensed or accredited financial analysts providing opinions of value, chiropractic, dentistry,

professional engineering, podiatry, pharmacy, veterinary medicine, registered professional nursing, harbor piloting, land surveying, law, psychology, medicine and surgery, optometry, and osteopathy.

- b. Personal Employment Services: Only those services rendered by a person who works full-time or part-time for and under the control of the state and receives compensation as a salary in direct payment from a department, agency or institution of state government.
- c. Department of Community Health for the purchase of health insurance for state employees and public school teachers under the State Health Benefit Plan.
- d. Georgia Merit System for the purchase of flexible benefits for State of Georgia Employees.
- e. Office of Treasury with respect to investments and investment related services.
- f. Hatch and Smith Lever Act purchases - Agricultural purchases from land grant universities.

Section 4: Delegation of Authority to State Agencies

4.1 Delegated Purchasing Authority

State Purchasing may authorize the various state departments, agencies, and institutions to make purchases which do not exceed \$100,000.00. This delegated dollar amount is referred to as the Agency's Delegated Purchasing Authority (hereinafter "DPA") and may vary from agency to agency, but in no event shall the DPA exceed \$100,000.00.

The SPD has developed the following procedure to address special circumstances, such as unanticipated needs that will enable state agencies to assist the SPD in facilitating procurements in excess of \$100,000.00:

1. The APO must e-mail the SPD Acquisition Manager with details concerning:
 - a. Justification for request
 - b. Purpose of the procurement
 - c. Estimated dollar value
 - d. Method of procurement
 - e. Requisition number
 - f. Name of state agency buyer
2. The SPD Acquisition Manager will respond to the APO with a decision on the Agency request. If the Acquisition Manager concurs with the request, the APO will be authorized to process the solicitation in accordance with the GPM.

3. Upon receipt of bids, the agency buyer will prepare and submit the following documentation to the SPD Acquisition Manager:
 - a. Bid tabulation in Excel spread sheet format
 - b. Recommendation for award
 - c. Solicitation response copies
 - d. Requisition
 - e. All additional solicitation documents
4. For solicitations exceeding \$100,000.00, a SPD Acquisition Manager will assign the solicitation file to a buyer to review, evaluate and issue the award. The SPD buyer will issue the Notice of Intent to Award based on the award recommendation and the Notice of Award after the protest period has ended and email the two documents to the vendor and Agency.
5. The SPD buyer will post to the Georgia Procurement Registry the Notice of Intent to Award once the award recommendation is approved and the Notice of Award after the protest period has ended or if there is a protest, once the protest has been resolved.

4.2 Initial Request of Delegated Purchasing Authority

There are instances where an agency may request an initial grant of Delegated Purchasing Authority using the Request To Increase Delegated Purchasing Authority (DPA) form along with the Agency Planning Document (ADP) form. The ADP includes information concerning distribution of authority within the agency, reporting requirements, training of purchasing staff, bid procedures, and other documentation relating to the agency's purchasing process.

Examples for an initial request for delegated purchasing authority would be the establishment of a new agency, or where an entity is administratively attached to an agency and has not received a delegation of authority in the past. The agency should attach any pertinent supporting documentation to its request. The SPD will review the Agency's request and will consider the following factors:

- Experience and training of the APO and procurement staff
 - Results of previous Purchasing Processing Reviews
 - History of purchase transactions
 - Agency internal purchasing procedures
 - Minority participation and reporting
1. The SPD will review the Agency Planning Document to determine the depth of the Agency's internal purchasing policies, procedures, and reporting systems to accurately track, monitor, and report use of state allocated funds. The State Purchasing Division Assistant Commissioner or designee may grant the Agency a

trial delegated authority for a 3 to 6 month or longer period until such time as the SPD conducts a Purchasing Process Review to determine whether the agency has instituted sound internal purchasing policies and procedures.

2. The SPDAC or designee will notify the Agency in writing of the final action taken on the request for an increase in DPA after the Purchase Processing Review. Any abuse of the DPA by the Agency could result in the DPA being removed.

4.3 Exceeding Delegated Purchasing Authority

In certain cases, the SPDAC may allow the Agency to exceed its Delegated Purchasing Authority, for example:

1. Where the lowest responsive bid received is in excess of the Agency's Delegated Purchasing Authority and the Agency did not issue the solicitation with the intent that the bid would exceed its Delegated Purchasing Authority,
2. Where the circumstances demonstrate that it is in the best interest of the state to expedite the purchase of the product or service and the Agency expects the bid(s) to be in excess of the Agency's Delegated Purchasing Authority.

The Agency must submit justification to the SPDAC or Designee for its request to exceed the Delegated Purchasing Authority. The SPDAC will review the Agency's request and justification, consider if the request is in the best interest of the state and may authorize the Agency to make an award exceeding the DPA by an amount not exceeding 10% of the Agency's DPA. If the review to exceed the DPA is granted, the SPDAC will give written approval to the APO. This procedure is not valid for agencies with a DPA of \$100,000.00. Those agencies with a DPA of \$100,000.00 must send all documents to the SPD for processing if the contract award will exceed \$100,000.00.

4.4 Increasing Delegated Purchasing Authority

An Agency Planning Document must be submitted to the State Purchasing Division whenever an agency requests an increase in its delegated purchasing authority. The Agency Planning Document includes information concerning distribution of authority within the Agency, reporting requirements, training of purchasing staff, bid procedures, and other documentation relating to the Agency's purchasing process.

1. The agency should submit a signed Request for Increasing Delegated Purchasing Authority form to the SPD, which includes an Agency Planning Document. The agency should attach any pertinent supporting documentation to its request. The SPD will review the Agency's request and will consider the following factors:
 - Experience and training of the APO and procurement staff
 - Results of previous Purchasing Process Reviews
 - History of purchase transactions
 - Agency internal purchasing procedures
 - Minority participation and reporting

2. The SPD will notify the Agency in writing of the action taken on the request for an increase in DPA. Any abuse of the DPA by the Agency could result in the DPA being removed.

4.5 Delegate Purchasing Authority for a Request for Proposal (RFP)

No Request for Proposal (RFP) can be processed without SPD authorization. In certain cases, SPD may allow the Agency to either issue or conduct an RFP where the circumstances demonstrate that it is in the best interest of the state. SPD may delegate purchasing authority to an Agency when written determination has been made to allow the solicitation.

The Agency must submit a written request to SPD for permission to issue or conduct a Request for Proposal (RFP). Authorization from SPD is required even if the solicitation dollar amount is within the Agency's DPA. SPD will review the Agency's request and consider whether the request is in the best interest of the State. If permission is granted by SPD, written approval to the Agency's APO will be submitted.

The request should include justification stating why the use of a competitive sealed bid is either not practical or advantageous to the State. Factors to be considered by SPD in granting the approval to the Agency are: Staff's experience, knowledge, professional certification, past SPD audits, and SPD's working experience with the Agency.

Section 5: Mandatory Purchases

5.1 Statewide and Agency Contracts

Agencies must purchase goods, commodities and services from statewide contracts where the items needed are available on those contracts. Agencies must also purchase items that are available on Agency Contracts for their particular agency. These contracts have met competitive solicitation requirements.

5.2 Statewide Purchases or Agency Contracts

1. When an agency needs to acquire supplies, materials, equipment, or services covered by either a Statewide or Agency contract, the Agency should issue a purchase order to the successful bidder/offeror referencing the contract and using contract price information provided by the SPD. Receipt of the purchase order authorizes the successful bidder/offeror to ship the items requested subject to the terms and conditions of the contract.
2. If a new Statewide contract is created and the Agency has an existing Agency contract containing the same product or service, the APO must notify the Statewide Contract Buyer and provide the following information:
 - a. Contract Number
 - b. Terms of the Contract

c. Contract Cost

5.3 Statutory Mandatory Sources

State agencies are required by statute to purchase certain products and services from Georgia Correctional Industries (GCI) and Georgia Enterprises where the products being purchased have been certified in writing. In the case of GCI, the Commissioner of Corrections must certify the products. The State Use Council must certify products for Georgia Enterprises. Products and Services not certified are not mandatory purchases under the Official Code of Georgia.

Section 6: Emergency Purchases

State Purchasing has granted the authority to state agencies, departments and institutions to purchase urgently needed items arising from unforeseen causes. An emergency procurement is handled outside of the normal competitive process because of the urgency of the circumstances. Therefore, SPD approval is not required in advance of the emergency purchase. It is always good business practice and considered to be in the best interest of the state to make any procurement as competitive as time permits. The APO must provide the SPD with written justification and a copy of the PO and all pertinent documentation relating to the purchase transaction.

Section 7: Procurement Training and Education

7.1 Assessment of Agency Training Needs

Training in procurement is important for procurement personnel and vital for new employees without prior experience in procurement. The SPD will coordinate with the APO to assess the training needs of agency procurement personnel, and will make procurement training available to assist in the development of highly skilled agency procurement staff. The APO should submit recommendations to the SPD on procurement topics.

7.2 Training Topics

The SPD will provide procurement training to APOs and other procurement staff. The training includes an overview of the procurement process for state agencies and includes topics such as the fundamentals of public purchasing, role and responsibilities of the APO, delegated purchasing authority, competition, specifications, procurement types, bid procedures, evaluation and award, the Open Records Act, the Georgia Procurement Registry and how to use the Georgia Procurement Manual.

7.3 Professional Associations

The SPD encourages APOs to join and participate in professional organizations. Periodically, State Purchasing will coordinate with professional purchasing organizations such as the National Institute of Governmental Purchasing (NIGP), and the National Contract Management Association (NCMA) to sponsor specialized classes.

Chapter 3: Source Selection and Contract Formation

Section 1: Procurement Process

1.1 Policy

All purchases made by a state agency should be based on competitive bidding whenever possible. Purchases less than \$5,000.00 may be made without competitive bidding. Small and minority businesses should be given a fair and equal opportunity to participate in the state's purchasing process. Agencies should establish their own internal procedures in accordance with the GPM. Agencies must follow the Order of Precedence that has been set by the SPD when purchasing commodities or services. The agency may purchase commodities and services within the agency's Delegated Purchase Authority; however certain procurements, such as Requests for Proposal discussed below, must be coordinated with the SPD.

1.2 Procedure

1. Whenever an agency identifies the need for a good, commodity or service, the process should begin with the development of specifications by the user, for example an engineer or other procurement official. The end user submits a written request for the commodity or service to the APO along with specifications. The APO should determine whether the commodity or service can be procured from a statewide or agency contract, or other mandatory sources. The APO must follow the Order of Precedence discussed below in making this determination.
2. If the dollar amount of the purchase is less than \$5,000.00 the APO will be able to purchase the item or service without competition. If the dollar amount is more than \$5,000.00, the APO must use competitive bidding procedures. The APO must next determine whether the item or service to be purchased is within the agency's Delegated Purchasing Authority. If the dollar amount of the purchase is within the agency's DPA, the APO can process the solicitation. The APO must post the solicitation on the Georgia Procurement Registry where the solicitation is \$10,000.00 or higher. An exception to this rule pertains to Sole Source procurements, which must be posted for procurements over \$5,000.00. If the dollar amount of the purchase exceeds the agency's DPA the solicitation must be processed by the SPD. In this case the agency must submit a requisition along with other pertinent documentation, including specifications to the SPD.
3. The SPD will review the requisition and other documentation submitted by the agency for completeness. The SPD will review specifications to ensure that they are not too restrictive so as to preclude competition. The SPD Buyer will coordinate with the agency throughout the solicitation process until a contract has been awarded.

4. The Agency must determine responsiveness and responsibility of Bidders and Offerors before a contract can be awarded to a vendor. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility.
5. Examples of non-responsible bidders/offerors include but are not limited to a bidder's/offeror's history of nonperformance or performance problems on other contracts (public or private), a record of financial difficulty, business instability, criminal sanctions, civil sanctions, and/or tax delinquency. Non-responsibility will be determined by the SPD or APO on a case-by-case basis taking into consideration the unique circumstances of the individual procurement. A non-responsibility determination of a vendor must be put in writing.
6. Before contract award, the APO shall review the SPD Suspension and Debarment listing. The list provides an up-to-date source of information on those firms and individuals that have been suspended or debarred from doing business with the State of Georgia. A contract cannot be awarded to a vendor/contractor who has been suspended or debarred from doing business with the government.
7. The SPD issues Notices of Award. The agency issues purchase orders to vendors. A purchase order is a contract between the agency and the vendor. The SPD requires that all purchase orders contain an authorized signature, correct payment and delivery terms and the appropriate "purchase type" codes and commodity codes.

Section 2: Order of Precedence

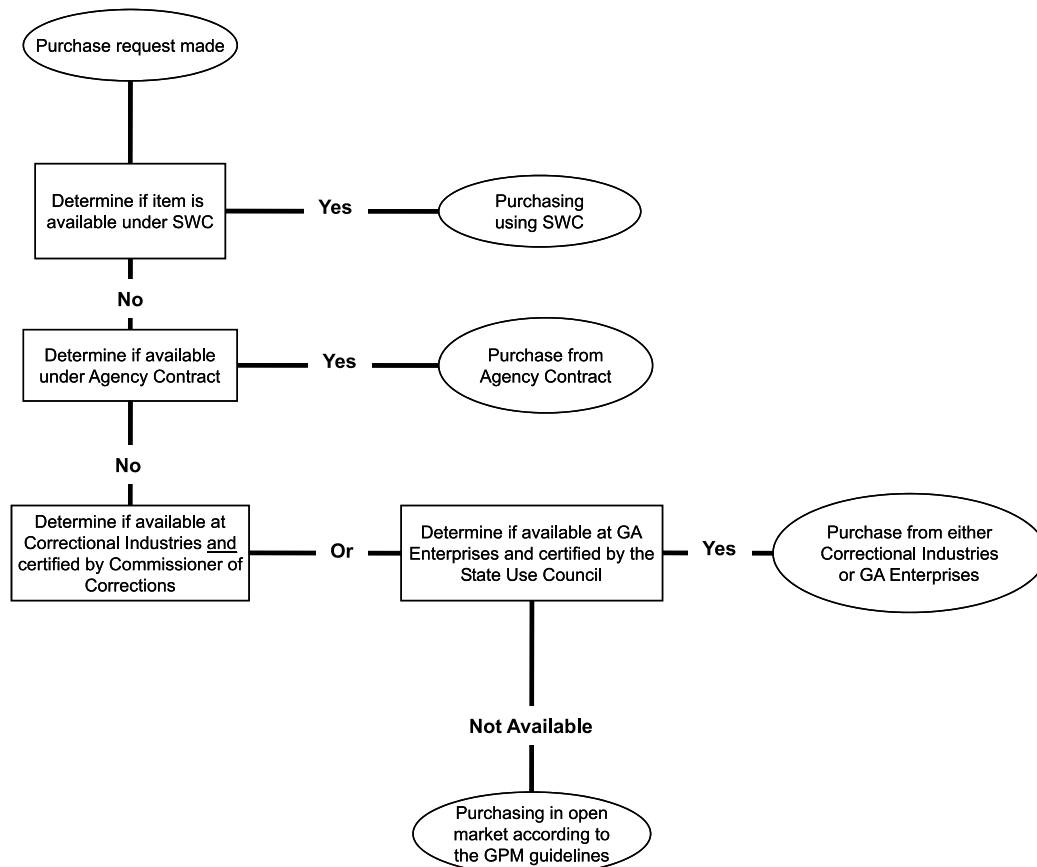
2.1 Policy

When purchasing a product or service the APO should adhere to the following order of precedence:

1. Statewide Contracts
2. Agency Contracts (for that agency)
3. Georgia Correctional Industries (GCI), Georgia Enterprises (GEPS) or Georgia Industries for the Blind (GIB)
4. Open Market Purchases

2.2 Procedure

The following flowchart shows the process for making mandatory source purchasing decisions.



Section 3: Methods of Procurement

3.1 Request for Quotation (RFQ)

A Request for Quotation (RFQ) is a formal solicitation method that includes a well-defined specification or scope of work and contains all contractual terms and conditions. The RFQ solicits sealed price quotations or bids from prospective vendors and seeks to obtain price quotes from qualified vendors using the lowest quote as the determining factor for awarding the contract.

The agency should use an RFQ if the project lends itself to the creation of a clear and accurate Statement of Work and the objective of the solicitation is to identify a vendor who can provide the required specifications at the lowest possible cost.

3.2 Request for Proposal (RFP)

A Request for Proposal (RFP) is a formal solicitation method that seeks to leverage the creativity and knowledge of business organizations in order to provide a solution to a unique procurement. The RFP solicits sealed price proposals from prospective vendors and seeks to obtain the “best value” for the State. The RFP method does not use the cost of the project as the single determining factor, but rather uses a combination of lowest cost plus best proposed solution to determine the award.

The Agency should use an RFP if the project does not lend itself to the creation of a clear and accurate Statement of Work (SOW) and the objective of the solicitation is to identify a vendor who can offer the best possible solution to the procurement at the most reasonable cost. See Chapter 2, Section 4: Delegation of Authority to State Agencies, and Chapter 3, Section 5.7: Competitive Sealed Proposals for conditions and authorization to conduct an RFP.

3.3 Request for Information (RFI)

A Request for Information (RFI) is a quasi-formal method for soliciting information from vendors who have knowledge or information about an industry, product, or service. The RFI method is not intended to result in a contract award but is designed to allow for the collection of industry information that will then be used to determine if an RFQ or RFP solicitation method is appropriate.

The agency should use an RFI if there is not enough information or knowledge about the product or service needed to develop a Statement of Work for an RFQ or RFP.

3.4 Request for Qualified Contractor (RFQC)

An RFQC is used in cases where the state is attempting to find vendors with the qualifications to produce the product or service desired. The required qualifications are known and each vendor is judged on its ability to meet or surpass the required qualifications. This form of solicitation may, but does not always, culminate in a contract award.

Section 4: Noncompetitive Procurement

4.1 Policy

If the APO determines that the needed items can reasonably be purchased for less than \$5,000.00, the purchase may be made without competitive bidding.

4.2 Procedure

The following procurement procedure shall be used for orders which are for less than \$5,000.00.

The user determines and transmits to the APO the requirements including specifications, delivery, and quantity.

The APO should first determine that the items are not available from a mandatory source.

Although competition is not required for purchases under \$5,000.00, State Purchasing recommends the comparison of products and prices from at least three (3) vendors prior to ordering.

The agency can purchase the item from the selected vendor through the State Purchasing Card (P-card) or a purchase order.

Section 5: Competitive Procurement

5.1 Policy

If the APO determines that the needed items are not available through a mandatory source, such as a statewide or agency contract, and the items are not available through a statutory mandatory source, such as Georgia Correctional Industries or Georgia Enterprises, the APO must purchase the item through the use of competitive bidding procedures unless the items can be purchased for less than \$5000.00. The agency has the discretion to enter into an inter-governmental agreement if the items to be acquired are available from that source; in this case, competitive bidding procedures do not apply.

5.2 Procedure

1. In every case where the agency identifies a need for a good, commodity or service and the solicitation is handled by the SPD, the agency must begin the process by the issuance of a requisition. This includes those cases where the validated amount of the procurement is expected to exceed the agency's Delegated Purchasing Authority as well as cases where the solicitation is valued at an amount in excess of \$100,000.
2. Requisitions submitted to the SPD must contain adequate specifications, validated budget, approval, and all other information pertinent to the procurement. If the solicitation is for a Request for Proposal, the agency may submit the requisition along with a brief description of the item or service to be purchased. The agency may submit other documentation to the SPD at a later time in accordance with the SPD RFP process discussed in the GPM.

5.3 Minimum Bid Policy

1. In those cases where the item or service to be purchased is within the agency's DPA and will be acquired using the competitive bid process, the agency must follow the minimum bid procedure.

2. Required Number of Minority Firm Solicitations

The following number of solicitations must be issued based on the estimated total purchase value. For example, as shown in the chart below: if the purchase value is expected to be between \$5,000.00 and \$9,999.99, six (6) solicitations must be issued three (3) of which must be issued to minority firms. However, any number of additional solicitations may be issued at the discretion of the APO.

| Minimum Bid Policy Chart | |
|---------------------------|------------------------|
| under \$5,000.00 | No Bidding Required |
| \$5,000.00 - \$9,999.99 | 6 (3 minority firms) |
| \$10,000.00 - \$49,999.99 | 10 (5 minority firms) |
| \$50,000.00 - \$99,999.99 | 15 (7 minority firms) |
| \$100,000.00-\$249,999.99 | 20 (10 minority firms) |

Posting to the Georgia Procurement Registry does not automatically fulfill an agency's bidding requirements. If the number of vendors who receive the automatic e-mail notification falls below the minimum requirement, then it is the responsibility of the APO to seek out the remaining vendors. It is recommended that the APO maintain a copy of the e-mail list in the appropriate agency file.

5.4 e-Quote Bids

eQuote is a software technology permitting simple Request for Quotes to be conducted online. Vendors responding to electronic Request for Quotes ("eRFQs") hosted by eQuote are permitted to login, enter a response per line item, enter a response of "no bid" per line item, and attach/upload documents to the bid response until bid closing. eQuote simplifies the bidding process by enabling electronic responses, reducing paper documents received, and automating the cost evaluation process.

1. **eQuote Scope.** eQuote is recommended for simple purchases which may be best solicited as Request for Quotes. eQuote may not be used for the following:
 - a. purchases to be conducted through Request for Proposals
 - b. purchases for construction services and/or materials
 - c. sole source procurements
 - d. purchases in excess of an Agency's DPA unless prior approval has been granted by SPD (please utilize the following online form: SPD-OP002 "One-Time Request to Exceed Delegated Purchasing Authority")
2. **eRFQ Advertisement Policy.** The following notification and advertisement policies are applicable to eRFQs hosted by eQuote:
 - a. Vendors Notified. eQuote interacts with the Vendor Registration System, enabling the Agency to take advantage of the automated email notification process for vendors maintaining active registrations. DOAS currently, as a courtesy, offers automatic email notifications of new procurement

opportunities to vendors electing to register in the Vendor Registration System. Registering vendors are allowed to select one or more NIGP codes which best reflect the types of goods and/or services the vendors offer. The NIGP codes selected by the registering vendor operate as a filter, limiting the automatic email notifications sent to the vendor to procurement opportunities which contain one or more of the vendor's selected NIGP codes. The Agency must comply with the following vendor notification policy:

eQuote Vendor Notification Policy Chart

| Estimated Solicitation Value | # of Registered Vendors Selected |
|-------------------------------------|--|
| Less than \$5,000 | No competitive bidding required |
| Less than \$249,999.99 | At a minimum, select the option within eQuote which randomly selects at least 20 Vendors (of which at least 10 must be minority firms if available) with current registrations for the NIGP codes identified for the specific eRFQ |
| \$250,000 or more | Select Option within eQuote which selects all Vendors with current registrations for the NIGP codes identified for the specific eRFQ |

- b. Vendor Request for Notification. Vendors (1) who do not maintain active registrations within the Vendor Registration System or (2) who are not randomly selected by the Vendor Registration System (in the event the Agency only elects to notify the minimum number of vendors as permitted above) may request to be added as a participant in the eRFQ by requesting access from the buyer identified as the point of contact for the eRFQ.
- c. Public Advertisement. Notices of eRFQs must be posted to the Georgia Procurement Registry as follows:

eQuote Public Advertisement Policy Chart

| Estimated Solicitation Value | Notice of eRFQ Posted to GPR |
|-------------------------------------|-------------------------------------|
| Up to \$9,999.99 | Not Required |
| \$10,000 - \$49,999.99 | Not Required |
| \$50,000 - \$99,999.99 | Required |
| \$100,000 - \$249,999.99 | Required |
| \$250,000 or more | Required |

As noted in the policy chart above, the Agency must advertise all eRFQs with estimated contract values of \$50,000 or more on the Georgia Procurement

Registry. To comply with this requirement, the Agency must either (1) create a listing on the Georgia Procurement Registry, which directs the vendor to submit an electronic bid through the eQuote system or (2) utilize the automatic process for listing open and pending eRFQs on the Georgia Procurement Registry once this automatic process becomes available.

- d. Posting Period. The eRFQ posting period must be calculated in accordance with the following recommendations and/or mandatory requirements as identified below:

Bid Posting Policy Chart

| Estimated Solicitation Value | Minimum Posting Period | Recommended Posting Period |
|-------------------------------------|--|---------------------------------------|
| Up to \$9,999.99 | Minimum of Three (3) Business Days | Minimum of Three (3) Business Days |
| \$10,000 - \$49,999.99 | Minimum of Seven (7) Calendar Days | Minimum of Ten (10) Calendar Days |
| \$50,000 - \$99,999.99 | Minimum of Eight (8) Calendar Days | Minimum of Fifteen (15) Calendar Days |
| \$100,000 - \$249,999.99 | Minimum of Ten (10) Calendar Days | Minimum of Twenty (20) Calendar Days |
| \$250,000 or more | Minimum of Fifteen (15) Calendar Days (<u>mandated by Georgia law</u>) | Minimum of Thirty (30) Calendar Days |

In the event the Agency determines it is appropriate to observe the minimum posting period rather than the recommended posting period, the Agency must document the justification for utilizing the minimum posting period and include such justification with the procurement file. Although the posting periods have been defined utilizing the estimated value of the solicitation, the estimated value is only one factor in determining an appropriate posting period. In selecting the appropriate posting period, the Agency must consider the complexity of the solicitation and an appropriate period of time for a vendor to review the solicitation, ask questions, and prepare a sufficient response. If a Pre-Bid Conference is conducted, it must be held not less than five (5) business days before the eRFQ closing date.

In the event the Agency desires to post a solicitation for less than the minimum posting period, the Agency must first submit a written request with detailed justification for such shorter posting period and receive written approval from SPD prior to proceeding with the shorter posting period. SPD will not approve any requested posting period which does not conform to the State Purchasing Act (O.C.G.A. Section 50-5-67). The written approval and justification for a posting period of shorter duration than the minimum posting period must be maintained as part of the procurement file.

3. Public Opening

- a. Automated Public Opening. The eRFQ must state the time and date the eRFQ will close (i.e. when all bids are due). The eRFQ closing date is also the bid opening. For vendors' convenience, all timely submitted bids are available for immediate public viewing after the eRFQ closing date by accessing the Georgia Procurement Registry online (http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp) and selecting the link for "closed eQuotes".
- b. Formal Public Opening. The Agency must perform a formal public opening and reading of electronic bids for any eRFQ with an estimated value of \$100,000 or more (See O.C.G.A. Section 50-5-67); provided, however, the Agency must accommodate any vendor desiring to attend the opening of the electronic bids regardless of the dollar amount. The time and date of the public opening and reading is the same as the eRFQ closing time and date. The eRFQ must state the location for the public opening and reading of the electronic bids received. Usually, the public opening is held in an Agency office which is easily accessible to the public. At a minimum, the Agency will read aloud the names of the vendors submitting bids and the corresponding bid prices. Vendors are welcome to attend the formal public opening; however, attendance is not mandatory. As an alternative, all vendors are welcome to view the electronic bids using the "automated public opening" described in subsection 3(a).

4. eQuote Awards

- a. Selecting Apparent Successful Vendor(s). After bids are evaluated, the Agency will select the lowest, responsive and responsible vendor(s) in accordance with stated award criteria. Whether a vendor may be considered "responsive" and "responsible" will be determined by the Agency on a case-by-case basis after considering any specific issues and their relevance to the procurement in question. The following general definitions are relevant:
 - i. "Responsive" means the vendor, whether a company or an individual, has submitted a timely offer which materially conforms to the requirements and specifications of the solicitation.
 - ii. "Responsible" means the vendor, whether a company or an individual, has appropriate legal authority to do business in the State of Georgia, a satisfactory record of integrity, appropriate financial, organizational and operational capacity and controls, and acceptable performance on previous governmental and/or private contracts, if any. Examples of non-responsible vendors include, but are not limited to, a bidder's history of nonperformance or performance problems on other contracts (public or private), a record of financial difficulty, business instability, criminal sanctions, civil sanctions, and/or tax delinquency. As noted in Chapter 3, Section 1.2 of the GPM, non-responsibility will be determined by the State on a case-by-case basis taking into consideration the unique circumstances

of the individual procurement. A non-responsibility determination of a vendor must be put in writing.

The standard eQuote instructions permit award to a single vendor or split awards to one or more vendors based on line items and/or subcategories of products and/or services.

- b. **Public Notice Requirements.** eQuote enables automatic emails to be sent to the lowest, responsive and responsible bidder(s) meeting all specifications, notifying the bidder(s) of award selection. In addition, eQuote automatically emails notice to all other participating bidders, notifying the bidders that their bids were not selected for award. In addition, the Agency must comply with the following table regarding public notice of the bid results:

| Notice of Award Policy | | |
|-------------------------------------|---|--|
| Estimated Solicitation Value | First Post NOIA? | Post NOA? |
| Less than \$50,000 | No | Yes 1. send via email to all participants <u>AND</u> 2. publicly display in a conspicuous place in the Agency's office |
| \$50,000 - \$99,999.99 | No | Yes 1. send via email to all participants <u>AND</u> 2. post to GPR listing |
| \$100,000 or more | Yes 1. send via email to all participants <u>AND</u> 2. post to GPR listing | Yes* 1. send via email to all participants <u>AND</u> 2. post to GPR listing *Unless otherwise authorized in writing by the SPDAC or DOAS Commissioner, the NOA should be posted (1) no earlier than 10 calendar days following the posting of the NOIA and (2) in the event a protest is received, only after the protest has been resolved. |

5. **Re-Award.** In the event an award must be changed, eQuote permits the Agency to "re-award" one or more line items to another vendor as necessary. For example, if the winning vendor is disqualified as a result of a sustained informal

complaint, the Agency would have the option of awarding to the lowest, responsive and responsible vendor of the remaining vendors.

6. **Forms of Payment.** A Purchase Order (PO) may be utilized as a form of establishing a contract with the awarded vendor. It is mandatory that the Purchase Order reflect the eRFQ number in the PO reference field.
7. **No fax or written bids permitted.** Fax or written bids cannot be used in conjunction with eQuote. Participating vendors must submit their responses electronically within the eQuote system.
8. **Record Retention.** As with all procurement transactions, the Agency must properly document the eQuote process by retaining all documents relating to the eRFQ and the resulting award (if any).

5.5 Informal Written Solicitations

Purchases involving expenditures of \$5,000.00 or more, but less than \$100,000.00 may be made by informal written solicitation whenever practicable, or by faxed solicitations. There is no formal public opening, reading of the bids/proposals or issuance of a Notice of Intent to Award required. After bids/proposals are evaluated a contract will be issued to the lowest responsive and responsible offeror meeting all required specifications or to the number one ranked responsive and responsible offeror meeting all required specifications.

5.6 Formal Sealed Bids

1. Conditions for use

Purchases involving expenditures of \$100,000.00 or more will be made by solicitation of sealed competitive bids/ proposals. Sealed bids designate a specific due date and time, are publicly opened, and prices read at the time and place designated in the RFQ. After the bids are evaluated, a Notice of Intent to Award will be posted for public display or on the GPR which will include the name of the successful offeror. After the protest period has ended or if there is a protest, once the protest has been resolved, a contract will be issued to the lowest responsible bidder meeting all specifications and with whom the State has reached agreement on all contract terms and conditions. It should be noted that the contract award will not be to the bidder with the lowest cost if the State determines that the low cost bidder cannot clearly perform the contract requirements.

2. Request for Quotes

- a. Requisitions are used to initiate competitive sealed bid procurement. The RFQ shall include the following:
 - Instructions and information to bidders concerning the bid submission requirements
 - Time and date set for bid closing

- Address of the office in which bids are to be received
 - Period that the bid shall remain open
 - Purchase description
 - NIGP commodity code
 - Specifications
 - Evaluation criteria
 - Delivery or performance schedule
 - Inspection and acceptance requirements
 - Contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
- b. If the RFQ incorporates documents by reference, the RFQ shall specify where such documents may be obtained. The RFQ shall require the acknowledgment by the bidder of the receipt of any addenda issued.
- c. The RFQ may require the submission of bid samples, descriptive literature, and technical data and may require inspection or testing of a product before award.
- d. The RFQ shall contain a certificate of non-collusion, which must be signed by an authorized representative of the bidder. Such person shall include his or her title and, if requested, shall supply verification of authority to bind the company in contract. Georgia law requires this certificate and failure to sign and submit it with the bid may result in its rejection.

The certificate of non-collusion states:

“I certify that this bid (proposal) is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid (proposal) for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I understand that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid (proposal), and certify that I am authorized to sign this bid (proposal) for the bidder (offeror).”
[O.C.G.A. 50-5-67]. “I further certify that the provisions of the O.C.G.A. 45-10-20 et seq. have not and will not be violated in any respect.”

3. Public Notice
- a. When sealed bidding is required, the APO shall post the solicitation to the Georgia Procurement Registry (hereinafter “Procurement Registry” or “GPR”) and in addition may advertise the solicitation in newspapers or other publications with statewide circulation.
- b. DOAS requires all competitive procurements \$10,000.00 and above and Sole Source procurements over \$5,000.00 to be posted to the Georgia Procurement

Registry. However, DOAS strongly urges agencies to post all competitive procurements to the GPR.

- c. The following guidelines shall be followed by agencies when posting competitive solicitations to the Georgia Procurement Registry:

| Competitive Solicitations Guidelines | |
|---|---------------------------------------|
| Sole Source solicitations valued \$5,000.00 and over | Minimum of five (5) business days |
| Solicitations valued from \$10,000.00 to \$49,999.99 | Minimum of ten (10) calendar days |
| Solicitations valued from \$50,000.00 to \$99,999.99 | Minimum of fifteen (15) calendar days |
| Solicitations from \$100,000.00 to \$249,999.99 | Minimum of twenty (20) calendar days |
| Any solicitation valued at \$250,000.00 and above and all Construction Bids | Minimum of thirty (30) calendar days |

With the exception of construction bids, the SPDAC reserves the right to approve the posting of a competitive solicitation for a period of time less than the guidelines stated above, when sufficient evidence justifying the reduced posting time period has been established. The requested reduced posting time period must comply with the requirements of the State Purchasing Act.

4. Pre-Bid Conference

- a. A Pre-Bid Conference is a meeting held with perspective bidders prior to the “Bid Closing Date/Time” to clarify any ambiguities, answer questions and ensures that all bidders have a common understanding regarding the supplies or services required. The APO can conduct a pre-bid conference within a reasonable time, but not less than seven (7) business days before the “Bid Closing Date/Time” to explain the procurement requirements.
 - Transcripts of such conferences may be taken and can be provided to all vendors who request a copy. Statements made at the pre-bid conference shall not be considered addenda to the RFQ unless a written addendum is issued pursuant to the conference.

5. Bid Closing and Submittals

- a. Modifications or Withdrawal of Bids Prior to Bid Closing
 - 1) A bidder may modify or withdraw a bid at any time before bid closing. The modification or withdrawal must be in writing and must be received before the time and date set for the bid closing. The bidder or an authorized representative may modify or withdraw the bid in person before the time and date set for bid closing.

- 2) All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.
- b. Late Bids, Late Withdrawals, and Late Modifications
- 1) A bid, modification or withdrawal is late if it is received after the time and date set for bid closing. Any bids received after the bid closing time and date will be rejected and stamped as a “late bid” clearly marked on the face of the envelope.
 - 2) Documentation concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file.
- c. Receipt, Closing and Recording of Bids
- 1) Bids and modifications (if any) shall be time and date stamped upon receipt and stored unopened in a secure place until the time and date set for bid closing. No unauthorized person(s) shall have access to the bid file. In the instances of sealed bids, bids shall remain unopened until the time and date set for bid closing.
 - 2) An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. In instances of sealed bids, a record shall be made on the envelope stating the reason for opening the bid. The record must also include the date and time the bid was opened, the solicitation to which the bid responded and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.
 - 3) Bids and modifications that are sealed shall be opened publicly, in the presence of one or more witnesses who are state employees. The bids shall be opened at the time, date and location designated in the RFQ. The name of each bidder, the bid price, and other information deemed appropriate by the APO shall be read aloud and recorded. The bids shall not be discussed during this time. Nor shall there be any attempt to determine or announce which bidder is the apparent low bidder.
 - 4) Bids shall be available for inspections for a reasonable time after the bid closing, without comments or discussions.
- d. Mistakes in Bids and Awards
- 1) A bidder may correct mistakes discovered before the time and date set for bid closing by withdrawing and/or correcting the bid.
 - 2) Generally, withdrawal will only be allowed in cases where there has been an honest mistake not resulting from negligence and the mistake is clearly ascertainable.
 - 3) After bid closing, the SPD Buyer or the APO may either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the state.

- 4) No erasure may be made on bids or proposals. Prior to the “Bid Closing Date/Time”, errors may be stricken and corrections entered provided that any such strike-over or addition is initialed by the person signing the bid/proposal or their agent. Negligence on the part of the bidder or offeror confers no right to correct such bids/proposals after their opening or due date.
- 5) After bid closing the SPD may, in its sole discretion, permit withdrawal when the best interest of the State would be served. Generally, withdrawal will only be allowed in cases where there has been an honest mistake not resulting from negligence and the mistake is clearly ascertainable. All decisions to permit correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the SPDAC or APO.

6. Bid Evaluation and Award

a. Evaluation of Bids

The contract shall be awarded to the lowest, responsive and responsible bidder whose bid meets the requirements and specifications, and contract terms contained in the RFQ. Unless otherwise provided for in the RFQ, award may be made by individual line item, by groups of line items, or for the aggregate total of all line items. Ordinarily, split awards will not be made unless the savings to the State exceeds five percent (5%) of the total contract price or \$500.00, whichever is greater. However, the APO reserves the right to split awards if those thresholds are not met.

- b. If awarded by the SPD, a written Notice of Intent to Award and Notice of Award shall be sent to the successful bidder, followed by a purchase order from the APO.

c. Acceptability Requirements

A product acceptability evaluation may be conducted to determine whether a bidder's product is acceptable as set forth in the RFQ. The evaluation shall not be used to determine whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as non-responsive.

d. Rejected Bids

The State of Georgia reserves the right to reject any and all bids/proposals submitted in response to any solicitation document, to reject any portion thereof, or to waive any minor irregularity or administrative requirement.

e. Evaluation and Clarification of Bids or Proposals

When evaluating any bid or proposal, the State may seek clarification from any bidder or offeror.

If after evaluation and obtaining clarification of a bid or proposal the State determines that a bid or proposal is unreasonable or unacceptable, or is

noncompetitive, or the low bid or highest scoring proposal exceeds available funds, the SPD will determine in writing whether time or other circumstances will permit the delay required to re-solicit competitive bids or proposals. If the SPD determines that the circumstances are such that the procurement cannot be delayed, a contract may be negotiated provided that each responsible bidder or offeror who submitted a bid or proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate.

In cases where the bid/proposals received are noncompetitive or the low bid or highest scoring proposal exceeds available funds, the negotiated prices shall be lower than the lowest rejected bid/proposal of any responsible bidder/offeror under the original solicitation.

f. Integrity of the Process

If at any time it is found that the integrity of the process has been compromised or that errors have occurred, the solicitation may be canceled. The procurement may be re-solicited if the State so desires.

g. Alternate Bids

Alternate bids will be considered for an award, if the product meets specifications and all of the requirements of the solicitation.

h. Single Bid

If only one responsive and responsible bid is received in response to a request for quote, an award may be made to the single bidder if the SPD buyer or APO determines in writing that the price submitted is fair and reasonable.

i. Cash Discounts

The phrase “cash discounts” refers to a discount off of the invoice price for early payment. The overall policy concerning any type of discount in bidding is one of preference and encouragement of a net bid price, FOB destination prepaid and added. All forms of deduction, discounting, or special pricing should be reduced to a simple net bid price for each item.

As a general rule, cash discounts offered from one (1) percent up to five (5) percent, for payment made in thirty (30) days, will be considered for the purpose of bid evaluation. However, an agency buyer may consider a cash discount offered by the vendor outside of the general rule noted above for the purpose of bid evaluation if the solicitation document so provides. To effectively exercise this discretion and determine whether cash discounts outside of the general rule should be evaluated, the agency buyer must assess the likelihood of the Agency making payment within the provided time period and the ability of the Agency to monitor and ensure the vendor’s compliance with the provided cash discount. **ANY DEVIATION FROM THE GENERAL RULE REGARDING CASH DISCOUNT EVALUATION MUST BE CLEARLY STATED IN THE SOLICITATION.**

All discounts offered will be taken if earned. In the event that the State is entitled to a cash discount, the period of computation will commence on the date of delivery, or receipt of a correctly completed invoice indicating the discount, whichever occurs later.

If the State is entitled to a discount under the contract, but the invoice does not reflect the existence of a cash discount, and the State pays the invoice, it shall be entitled, upon demand, to a credit in the amount of such discount.

Payment of invoices owed by the State shall be made whenever possible within thirty (30) days of the receipt of a correct invoice or goods, whichever is later, unless otherwise provided for in the solicitation document or resulting contract.

All bid considerations and justifications should be detailed on the bid tabulation to document determination of award.

j. Reciprocal Preference Law

The law requires that bidders/offerors resident in the State of Georgia be granted the same preference over bidders and offerors resident in another State in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids or proposals for the same goods and services by such other State to bidders and offerors resident therein over vendors resident in the State of Georgia. This reciprocal preference is used for evaluation purposes only.

k. Resolving Tie Bids

A tie bid exists when two (2) or more bidders offer, at identical prices, products that meet all specifications, terms, and conditions. In such a situation, State statutes provide three (3) preferences which shall be used to resolve tie bids whenever applicable: (1) preference for products manufactured or produced within the State of Georgia; (2) preference for products sold by local bidders/offerors within the State; and (3) preference for products manufactured or sold by small business. If these statutes are insufficient to resolve the tie, consider the following in the order listed:

- Past performance of the bidders
- Earliest delivery date
- Division of the order
- Closest proximity to delivery site
- Flip of a coin

l. Coding Requirements

- 1) Commodity Codes are used to identify the source of commodities and/or services being purchased. Every line item purchased will be coded. If the line item is \$500 or more the applicable NIGP commodity code must be used. Agencies may use the “99999” code for line items under \$500. If the agency is currently using the NIGP commodity code for purchases

under \$500 they may continue to do so. Statewide, agency contracts must include the NIGP commodity code already assigned regardless of the dollar amount.

- 2) Purchase type codes must be identified on each purchase order issued by the Agency as follows:

| Manual Codes | People Soft Codes |
|--------------|---------------------------------|
| AC | Agency Contract and Releases |
| CSN | Construction; PW; A&E |
| EXM | Exemption per OCGA 50-5-58 |
| IGA | Intergovernmental Agreement |
| MAN | Mandatory—GCI, GEPS, GIB |
| OMP | Open Market Purchase |
| SB | Sole Brand – per GPM |
| SS | Sole Source – per GPM |
| SWC | Statewide Contract and Releases |

5.7 Competitive Sealed Proposals

1. Conditions for use

A Competitive sealed proposal shall only be used as a method of solicitation after a written determination has been made by the Department of Administrative Services, State Purchasing Division (SPD), that the use of a competitive sealed bid is either not practicable or not advantageous to the State. No Request for Proposal (RFP) can be processed without SPD authorization. To issue or conduct an RFP, authorization from SPD is required regardless of the dollar amount.

2. Requests for Proposal

Competitive sealed proposals shall be solicited through a RFP. This form of procurement is a formal invitation from the SPD on behalf of the Agency to vendors requesting a competitive and creative solution to a unique procurement that has been identified. However, where the circumstances demonstrate that it is in the best interest of the State, SPD may delegate purchasing authority to an Agency to either issue or conduct an RFP. Based on written information provided by the Agency, SPD will determine in writing if a solicitation can be issued as an RFP and if requested, allow the Agency to conduct the RFP. See Chapter 2, Section 4.5: Delegated Purchasing Authority for an RFP, for the type of information needed in the Agency's justification.

An RFP describes in general terms the needs of the State. Vendors are expected to propose their own comprehensive innovative solutions to the need described in the RFP.

The Agency must adhere to the RFP processes when an RFP is involved. The following documents are necessary to the process and are listed on the

Department of Administrative Services, State Purchasing, web site under Resources→Standard Purchasing Forms→SPD Official Forms→Stage 3, for assistance:

- Request for Proposals Template, Form SPD-SP007a
- Instructions for Request for Proposals Template, SPD-SP007b

3. Evaluation Factors

The RFP shall state the relative importance of price and other factors and sub factors.

4. Discussion with Responsible Offerors and Revisions to Proposals

When evaluating any bid, proposal or statement of qualifications, the state may seek clarification from any bidder or offeror at any time.

Discussions and negotiations may be conducted with offerors who are deemed qualified and reasonably susceptible for award based on criteria set forth in the solicitation document. DOAS is authorized to engage in one or more rounds of discussions and negotiations for the purpose of seeking clarifications, revisions, and/or best and final offers for technical and/or cost proposal and all such discussions and negotiations shall be reduced to writing within the time prescribed by DOAS.

In conducting such discussions and negotiations, there shall be no disclosure to competing offerors of any information contained in the competing offerors proposals (technical or cost) except the disclosure of information derived from the proposals may be disclosed as follows: if the solicitation document contains a provision notifying offerors that the state may use a process of allowing multiple revisions to cost proposals to establish the final cost proposal, DOAS is authorized to disclose information derived from (but not contained in) the proposals to competing offerors such as overall rankings and overall scores for the purpose of soliciting ongoing revisions to cost proposals.

When DOAS uses negotiations, the following preliminary considerations, guidelines and procedures shall apply:

- 1) DOAS may elect to proceed with negotiations. In some instances, the condition supporting negotiations may be known to DOAS prior to issuing a solicitation. In some instances, the condition supporting negotiations may not be known to DOAS until after a solicitation commences.
- 2) If the DOAS elects to proceed with negotiations, a state negotiation team will be convened, which may be the same team as the evaluation team on any individual procurement.
- 3) Once convened, the negotiation team shall confirm the purpose and scope of negotiations and the identity of the offerors who shall be invited to participate in negotiations.
- 4) The negotiation team shall obtain approval from the Category Manager, or his/her designee, to proceed with negotiations.

- 5) DOAS shall identify which offerors shall participate in the negotiations in one of the following ways:
 - a. DOAS may identify in the solicitation document the methodology that will be used to identify offerors to participate in negotiations. This may include, but is not necessarily limited to, a methodology that establishes a competitive range based on offerors' rankings following proposal evaluations.
 - b. DOAS may identify in an addendum to the solicitation document the methodology that will be used to identify offerors to participate in negotiations.
 - c. DOAS may negotiate with all responsive responsible offerors following bid/proposal evaluations.
- 6) Offerors will be notified in writing (i) that DOAS is initiating negotiations; (ii) the general purpose and scope of the negotiations; (iii) the anticipated schedule for the negotiations; and (iv) the procedures to be followed for those negotiations. This information may be provided in a single or separate document(s).
- 7) DOAS may issue additional information and/or instructions to offerors participating in negotiations as needed.
- 8) After the negotiations, participating offerors may be asked to submit supplemental proposals defining the revisions that are a result of negotiations. Any request for supplemental proposals will be directed in writing to all offerors participating in the negotiations, and will provide details concerning the format and due date for the supplemental proposals.
- 9) Negotiations may be completed after a single round, or may be done in several rounds as determined by the negotiation team.
- 10) A written record describing the procedural steps taken in the negotiation process and the basis for final contract award shall be maintained.
- 11) The DOAS may in its sole discretion terminate negotiations and/or the solicitation at any time.

5. Contract Award

Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the State taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Notice of the award of a contract to the successful offeror will be posted to the Georgia Procurement Registry after award.

5.8 Cancellation of Requests for Quotes or Requests for Proposals

An RFQ or RFP or other solicitation may be canceled, or any or all bids may be rejected in whole or in part as may be specified in the solicitation and which is in the best interests of the State in accordance with regulations. The reasons shall be made a part of the contract file.

5.9 Reverse Auctions

Reverse auctions may be used as a form of competitive bidding and as an alternative to sealed bidding. The reverse auction process allows the vendors to see the lowest bid but not the identities of the bidders during the bidding process. Once the reverse auction is closed, the SPD evaluates the bids and awards the contract to the lowest responsive and responsible vendor.

5.10 Compliance with Federal Requirements

Where the procurement involves the expenditure of federal funds, state agencies shall comply with federal law and authorized regulations which apply to the procurement. The APO shall contact the SPDAC if the federally required contract clauses appear to conflict with state law. Federal and/or private grant funds are not exempt from the Purchasing Act. The rules of competitive bidding still apply.

5.11 Electronic Solicitation

Competitive sealed bids and proposals can be received by way of the Internet or other electronic means, however, any bids or proposals received must comply with security standards established by the Georgia Technology Authority. The advertisement of the electronic sealed bids and proposals will be posted to the GPR, with directions on how to obtain access to the solicitation. The guidelines for the number of business days that a competitive solicitation shall be posted to the GPR as defined in the GPM, Chapter 3, Section 5.6, Item 3.C, Public Notice, may be reduced by up to 50% for electronic solicitations issued by DOAS and as approved by the Category Manager. This provision does not apply to construction bids.

Electronic solicitations, which include competitive sealed bids and proposals, will be administered pursuant to the “Georgia Electronic Records and Signature Act”. Electronic bids and proposals meet the sealed bid and proposal requirements. An electronic record meets any requirements for writing and an electronic signature meets any requirements for an original signature. All public electronic records are subject to inspection under the provisions of the Open Records Act and the GPM.

Electronic sealed proposals must include a technical proposal and a cost proposal. In its technical proposal, the offeror must provide a detailed and comprehensive description of the offeror's proposed solution to the State's needs. In its cost proposal, the offeror must describe the total cost of the proposed solution described in the technical proposal. The technical proposal will be released to the evaluation team, evaluated and receive a score and then the cost proposal will be released to the evaluation team, evaluated and receive a score. The two scores are added together.

The Issuing Officer will analyze the cost proposals independently, but at the same time the Evaluation Team is analyzing the technical proposals. The Issuing Officer will not disclose the cost proposals or the cost analysis to the Evaluation Team until after the technical proposals have been scored. Final scoring and selection of all responsive responsible offerors proposals will be by consensus after thorough discussion of each proposal.

5.12 Public Notice

Public notice of expected contract awards and actual contract awards shall occur in the following manner:

1. Notice of Intent to Award. The Notice of Intent to Award is a form identifying the intended contract award to the apparent successful bidder(s)/offeror(s), the names of all bidders/offerors whose bids/proposals were rejected, and the reasons for rejection of the unsuccessful bidders/offerors. The Notice of Intent to Award is publicly posted before a contract award is made. Although the Issuing Officer may elect to provide individual notice of the Notice of Intent to Award to participating vendors as a courtesy, there is no requirement for personal notice. The Notice of Intent to Award is optional for all contracts with an estimated value of less than \$100,000.00. The Notice of Intent to Award is mandatory for all contracts with an estimated value of \$100,000.00 or more.

SPECIAL NOTE FOR SOLE SOURCE ACQUISITIONS. As further described in Chapter 3 of this manual, sole source acquisitions valued at \$5,000 or more must be publicly advertised on the Georgia Procurement Registry. The published sole source notice shall serve as the agency's notice of intent to award for purposes of this section.

2. Notice of Award. The Notice of Award is a form identifying the contract award to the successful bidder(s)/offeror(s), the names of all bidders/offerors whose bids/proposals were rejected, and the reasons for the rejection of the unsuccessful bidders/offerors. The Notice of Award is publicly posted within one day of contract award. The Notice of Award is mandatory for all contracts. For all contracts with an estimated value of \$100,000.00 or more, the Notice of Award may not be issued prior to the expiration of the protest filing period and the resolution of any protests received unless the State Purchasing Division Assistant Commissioner makes a written determination, after consulting with the Agency, that award of the contract without delay is necessary to protect the interests of the State. If it is determined that it is necessary to proceed with contract performance without delay, the bidder/offeror with this contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract; however, such bidder/offeror shall not be entitled to reimbursement for any capital outlay costs, or other up front expenditures incurred in performing the contract.
3. Contract Award. All contract awards will be made by the issuance of a Notice of Award and/or a Purchase Order. The State has the authority to review any solicitation or award at any time and for any reason and all contracts shall be contingent upon and subject to defeasance by the protest and informal complaint procedures set out in this Manual. The

signed contract is available for public view and inspection following the issuance of the Notice of Award and/or Purchase Order.

Section 6: Types of Procurements

6.1 Agency Contracts

1. **Defining Agency Contracts.** Agency contracts are contracts in which a state agency is a contracting party. The phrase "agency contract" should be distinguished from "statewide contract," which refers to a contract established by DOAS to provide a mandatory source of supplies, materials, equipment or services for multiple state agencies. In contrast, the agency contract is generally solely for the use of the state agency named in the contract. For an example of an exception, please see the section of the Manual concerning "piggybacking."
2. **Establishing Agency Contracts.** To establish an agency contract, the agency must comply with competitive bidding requirements. The expected result of a successful procurement is a satisfactory agreement between the state agency and the contractor for the desired goods and/or services at a competitive price. This agreement, or agency contract, includes the solicitation and the accepted proposal as revised by any negotiations or the final bid. Please note that only SPD may conduct rounds of negotiations as identified in O.C.G.A. Section 50-5-67(a)(6). Finally, the agency agreement includes certain contractual terms and conditions which provide further definition of the parties' rights and duties under the agreement.
 - a. **Delegated Purchasing Authority.** The agency contract may be established by the agency unless the estimated cost of the solicitation exceeds the agency's delegated purchasing authority (DPA). If the estimated cost of the procurement exceeds the DPA, the agency must submit a requisition to SPD.
 - 1) **Monitoring the Open Contract.** If an agency establishes a contract in which the exact amount of goods and/or services to be purchased throughout the contract term is not fixed (also referred to as an "open contract") but the agency estimates the total purchases will not exceed the agency's DPA, then the agency must monitor the purchasing activity under the contract to ensure that the expenditures do not exceed the agency's DPA.
 - 2) **Special Request to Exceed DPA.** If the cumulative total of purchases throughout the duration of the open contract exceeds an agency's DPA, then the Request to Exceed Agency Delegated Purchasing Authority (DPA) form (available online) needs to be completed by the agency and submitted to SPD for approval.
3. **Duration of the Contract.** The duration of agency contract terms may vary. When determining beginning and ending dates of the initial contract term, the agency must consider both its needs and its budget. To ensure the contract dates

comply with state policy prohibiting the pledging of the state's credit, the agency must set aside sufficient funds to meet the entire financial obligation of the initial term of the contract when the contract is signed.

- a. **Multi-Year Contracts.** An agency may establish a multi-year contract within its delegated purchasing authority (DPA) by including a contract provision approved by SPD providing the agency the right to renew the contract after the initial term. All multi-year contracts in excess of an agency's DPA must be established by the SPD.
 - 1) **Exercising a Renewal Option.** Before exercising a renewal option, the agency must evaluate whether it is in the best interest of the State to renew the current contract rather than competitively bid the procurement. For more information on exercising a renewal option, the agency should access the contract administration section of the Manual.
 - 2) **Contract Assessment Report.** As part of the contract renewal process, the APO must complete a Contract Assessment Report (available online) and maintain the report in the contract file. If the Agency contract is outside of the Agency's DPA, the Agency must submit the Contract Assessment Report to SPD with a request for renewal at least sixty days in advance of the expiration of the current contract term.
- b. **Contract Renewal Limitations.** No Agency contract can exceed the initial term plus four (4) options to renew or a combined total of five (5) years without SPD approval. If an agency requires a contract to exceed a total of five (5) years, justification must be prepared and submitted to SPD.

6.2 Types of Agency Contracts

1. **SPD Approved Standard Contracts.** SPD has developed contract forms and contractual terms and conditions to be utilized in developing agency contracts. The latest revised versions of SPD approved contract terms and conditions will be maintained on the DOAS website at <http://www.statepurchasing.doas.georgia.gov>.
2. **Defining Types of Agency Contracts.** An agency's selection of a contract will be dependent on the specifics of the solicitation.
 - a. **Subject Matter of the Procurement.** The contract terms and conditions are specific to the solicitation's subject matter, such as goods or services.
 - 1) **Contract to Procure Goods.** This type of contract is utilized when an agency procures a product.
 - 2) **Contract to Procure Services.** This type of contract is utilized when the agency desires the labor, time or effort of a contractor.
 - i. **Maintenance.** As an example of a service contract, a maintenance contract may be used for the upkeep of property that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition. A maintenance contract for equipment

should list the equipment to be maintained, serial numbers when possible, location of equipment, number and frequency of service calls and full details of services to be performed.

- b. **Type of Financial Transaction.** In addition, the contract terms and conditions may be separated by the type of financial transaction the agency desires.
 - 1) **Purchase.** The most common financial transaction accomplished by an agency contract is the purchase of goods or services.
 - 2) **Rental or Lease.** A contract for the rental or lease of equipment is used when an agency requires the use of equipment owned by a vendor for a specified time, in return for compensation.
 - 3) **Installment Purchase.** An installment purchase contract may be used when an agency desires to purchase an item by making payment over time.
- c. **Open v. Fixed Quantity Purchase.** An "open" agency contract is used when exact quantities needed are not known at the time the contract is established. A "fixed quantity" contract is used when exact quantities needed are known at the time the contract is established.

6.3 Insurance Limits

The insurance dollar limit coverage stated in the sample contracts section of the manual is recommended by State Purchasing. This recommendation does not imply that agencies cannot change the recommended dollar amounts. Each agency should fully assess the risk for lowering the recommended dollar amounts based on the particular need.

6.4 Multi-Year Contracts

1. State Purchasing is authorized to execute on behalf of all state agencies multi-year lease, purchase, or lease purchase contracts for the acquisition of goods, materials, services, and supplies.
2. A contract for supplies, services or equipment may be entered into for any period of time deemed to be in the best interest of the State, provided the term of the contract and conditions of renewals or extension, if any, are included in the solicitation and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds.
3. No contract developed and executed shall create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
4. The contract shall state the total obligation of the user agency for the fiscal year of execution and shall further state the total obligation, which will be incurred in each fiscal year renewal term, if renewed.

5. The contract shall terminate immediately at such time as appropriated and otherwise un-obligated funds are no longer available to satisfy the obligations of the user agency under the contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred.
6. The contract may provide for the payment by the user agency of interest or the allocation of a portion of the contract payment to interest.

6.5 Piggyback Cooperative Purchasing

Piggyback purchasing allows the issuing agency and the awarded vendor to agree to open up the contract for the use of other agencies. However, the vendor must offer other agencies the same prices, terms and conditions as that of the issuing agency. The contract is mandatory for the issuing agency and optional for all other agencies.

1. An agency will be permitted to use another agency's contract only with the approval of the SPDAC. The agency must submit documentation which includes the issuing agency's approval to "piggyback" on the contract, the contract number and the name of the vendor along with a justification as to why the other agency's contract should be used. The APO must indicate whether there will be repetitive purchases or whether this is a one-time buy.
2. All agencies that are given permission by the SPDAC to use another agency's contract must submit a monthly report listing other agency contracts that are being used along with a list of purchase orders and dollar amounts that have been issued against the other agency contract.

6.6 Notice of Award Amendments

1. Agencies must use the following procedures to make changes, revisions, extensions, renewals or cancellations to contract awards originally issued by an agency under the Delegated Purchasing Authority and Contract Awards originally issued by the SPD on behalf of an agency.
 - a. The APO should issue a letter to the contractor stating the Agency's desire to renew the contract at the same price, terms and conditions as the original contract. The letter should be issued to the contractor sixty (60) days prior to the expiration date of the contract. This allows the Agency sufficient time to send out a new solicitation for bids in the event that the contractor is not willing to renew the contract at the terms requested by the Agency.
 - b. The contract amount may change if the original contract included provisions for a change in terms. For example, the price may change if the original contract contained a price escalation clause. The letter to the contractor should contain the effective and expiration date of the original contract. In the event of a change, the letter should also contain a description of the change as well as any change in the monetary amount.
 - c. The renewal letter to the contractor can also provide for the contractor's approval signature and a date line with provisions for the letter to be returned

- to the Agency. Or, the APO may request that the contractor issue a letter of agreement on the contractor's letterhead.
- d. The APO should complete and issue the appropriate document which can be downloaded from the DOAS Procurement web site, for example, Notice of Contract Amendment, Notice of Contract Extension, or Notice of Contract Cancellation. If the Agency operates under an automated procurement system, a system-generated change should be initiated. The APO should issue to the vendor a copy of the appropriate Notice Form.
 - e. The APO shall maintain a copy of each approved document in the original contract file.
2. Following is the process for renewing agency contracts originally issued at the agency level:
- a. The APO should issue a letter to the contractor stating the Agency's desire to renew the contract at the same price, terms and conditions as the original contract. The letter should be issued to the contractor sixty (60) days prior to the expiration date of the contract. This allows the Agency sufficient time to send out a new solicitation for bids in the event that the contractor is not willing to renew the contract at the terms requested by the Agency.
 - b. The contract amount may change if the original contract included provisions for a change in terms. For example, the price may change if the original contract contained a price escalation clause. The letter to the contractor should contain the effective and expiration date of the original contract. In the event of a change, the letter should also contain a description of the change as well as any change in the monetary amount.
 - c. The renewal letter to the contractor can also provide for the contractor's approval signature and a date line with provisions for the letter to be returned to the Agency. Or, the APO may request that the contractor issue a letter of agreement on the contractor's letterhead.
 - d. The APO should complete and issue the appropriate document to the vendor in accordance with their internal operating procedures. The APO should be cognizant of any price changes resulting from escalation or de-escalation clauses; and should ensure that all renewals contain original pricing as well as the changes in price. Documentation provided to the vendor should include at a minimum the same information contained on the Notice of Award Amendment form.
 - e. The APO shall maintain a copy of all pertinent documents in the original contract file.

6.7 SPD Established Contracts

1. The APO should send an electronic mail (e-mail) request to the SPD Issuing Officer indicating the original requisition number, vendor name, description of product or service, and action desired.

2. The SPD Issuing Officer will review the solicitation and award file for appropriateness of action and provide the APO with authorization to proceed via reply e-mail.
3. The APO should issue a letter of request to the awarded vendor(s) stating the action desired, effective and expiration date, if applicable, description of change, and any change in the monetary amount (original and new). The letter can provide for the vendor's approval signature and date line for return to agency or request that the vendor issue a letter of agreement on the vendor's letterhead.
4. The APO should obtain the signed approval document from the vendor.
5. The APO should download, complete, and sign the appropriate form. The APO should then forward the form and signed Letter of Agreement from Vendor to the SPD Issuing Officer via e-mail or Facsimile transmission.
6. The SPD Issuing Officer will sign the Notice Form and send a copy of each form and any other necessary documentation to the originating agency.
7. The APO and SPD will maintain a copy of all documents and transmissions in the original solicitation and award file.

6.8 Statewide Contracts

A Statewide Contract is a mandatory source contract set up by the SPD to consolidate volume purchases for goods and services. All state agencies are required to use statewide contracts when applicable. At the vendor's discretion and in accordance with the terms and conditions of the contract, local governments and municipalities may use the contracts.

1. Statewide Contract Releases
 - a. The APO should determine the Agency's needs regarding specifications, delivery, and quantity and use the statewide contract, which meets these requirements.
 - b. The APO should contact the vendor to place the order using the P-card or by issuance of the purchase order.
 - c. The item description, quantity, unit of measure, and unit price for each item ordered must be included when placing an order.
 - d. The Statewide contract number along with the NIGP code shall appear on each order.
 - e. The APO or a designee should sign the purchase order release.
2. Statewide Contract Waiver Requests
 - a. Waivers to contracts are allowed for purchases outside of existing contracts with approval from the SPD. Approvals will be limited to purchases with a specified time frame and/or dollar value. Justifiable reasons include, but are not limited to, the Agency's ability to pay, cost, delivery time, compatibility

with existing agency situations, or special valid needs not covered by existing contracts, or specifications.

- b. Requests for waivers shall be submitted by the APO in writing to the Issuing Officer responsible for the contract for which the waiver is submitted. The contract name, number, quantity, price, and justification for the request shall be included. The Issuing Officer will notify the requester in writing with approval and a waiver number for the file. Waivers to statewide contracts do not relieve the agencies of any bidding requirements.
3. Statewide Contract Development
 - a. DOAS is authorized to establish centralized contracts such as statewide contracts that utilize standard specifications in order to decrease the overall cost of the commodities to the State. Agencies cannot purchase similar commodities covered by statewide contracts unless authorized by DOAS.
 - 1) When the APO anticipates that the Agency has a new combined purchase need for an item of continuous usage, representing significant dollar volume, suitable for standard purchase, or inventory reduction, the APO should assemble data from the new item. This data should be relevant to the Agency's requirements which may include but are not limited to the following items:
 - Past or anticipated usage
 - Past average price per unit
 - Delivery requirements including delivery time and the number of locations
 - Past or known vendors and performance evaluations and any vendors who are considered unsatisfactory
 - Forecasted annual usage by delivery location
 - Required inventory levels and anticipated lead time
 - Special or unique conditions
 - Other agencies known to use the item
 - Past annual number of orders for the item
 - 2) The APO should submit information with data to the State Purchasing Acquisition Manager for Statewide Contracts requesting that a new contract be investigated.
 - 3) The State Purchasing Acquisition Manager for Statewide Contracts will discuss the item with the appropriate staff and assign the item to the work schedule for research and development.
 - 4) The State Purchasing Acquisition Manager for Statewide Contracts will review the requirements in conjunction with other agencies that possibly have the same requirements. If the requirements of the submitting agency and other state agencies appear to be sufficient, then the State Purchasing

Acquisition Manager for Statewide Contracts will begin the process of developing a new statewide contract. However, if the requirement is not large enough or appears to be localized to the requesting agency, then the State Purchasing Acquisition Manager for Statewide Contracts will notify that agency to prepare a purchase requisition for an Open Contract.

- 5) APOs are encouraged to submit their specific requests on a regular and continuing basis to ensure that their most urgent needs are reflected in the current work schedules and are invited to contact the SPD to discuss their consolidating and contracting ideas.
- 6) The SPD may form a Users Group with technical skills within the commodity area for SWC to provide their expertise and guidance during the evaluation process.

b. Scheduled Buys

- 1) The APO should submit requests for specific items to be developed for scheduled buys in accordance with the general procedure for development of term contracts or consolidated purchases.
 - A scheduled buy item is one scheduled for combined bidding and purchase for all agency requirements at one time, usually on an annual biannual, quarterly, or monthly basis.
 - For optimum purchasing benefit, a scheduled buy item should be ordered for delivery in one lot to each delivery location. This usually requires storage availability by each agency. If a single bulk delivery is not feasible, specific scheduled deliveries to each agency can usually be provided in the order.
 - A firm quantity commitment is necessary for a scheduled buy item.
 - To be a good candidate for scheduled buying, an item should be of use to more than one agency, fairly high dollar volume, storable, of standard quality, of somewhat seasonal nature, and forecasted to be in a rising price situation.
- 2) The SPD buyer will incorporate items into the work schedule for development of the scheduled buy.
- 3) The SPD buyer will research and develop items for feasibility of the scheduled buy. If scheduled, the SPD will notify the APO and request the APO to submit requisitions by a certain date.
- 4) The APO determines period requirements for his agency and submits a requisition to the SPD for the scheduled buy.

c. Administrative Fee

House Bill 312 and the Official Code of Georgia Annotated Section 50-5-51 (10) give the Department of Administrative Services (DOAS) the authority to collect moneys, rebates, or commissions payable to the State that are

generated by supply contracts established pursuant to Code Section 50-5-57 and DOAS designates a vendor or vendors as authorized sources of supply (whether for goods or services). Therefore, as defined in the solicitation for statewide contracts for goods or services, DOAS may require awarded Contractors to provide a percent administrative fee that would be imposed on all sales under the contract. The administrative fee amount will be defined by DOAS and added to the apparent winning cost proposal prior to contract award.

6.9 Sole Source

1. **Definition.** Sole source acquisition means a contract for the purchase of supplies and/or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source. Sole source acquisition shall not include any of the following:
 - a. Purchases from existing agency or statewide contracts,
 - b. Approved “piggybacking” purchases,
 - c. Contracts with non-profit entities,
 - d. Intergovernmental agreements,
 - e. Purchases which, either through statute or other regulation, are exempt from the competitive solicitation process and/or the State Purchasing Act, and/or
 - f. Any contract resulting from a competitive solicitation conducted in accordance with the provisions of this manual even if only one responsive and responsible bid/proposal is received.
2. **Policy.** For contracts with a value of \$5,000.00 or more, sole source acquisitions are prohibited unless the agency establishes justification why the needed supplies and/or services should not be procured through open competition. Sound procurement practice requires that a sole source acquisition occur when it is the only option and not as an attempt to contract with a favored service provider or for a favored product. Some examples in which a sole source acquisition could be acceptable are:
 - a. When only the proposed source can furnish the services because of its previous agency/Institute experience and having an alternative source duplicating these capabilities would result in excessive cost to agency/Institute. (Excessive cost must be quantified.)
 - b. When only one (1) supplier can satisfy the technical requirements because of unique technical competence or expertise. (Technical requirements must be valid and verifiable.)
 - c. The item does not satisfy the requirements for Sole Source, but the use of any other manufacturer’s product would result in excessive cost to agency/Institute. (Excessive cost must be quantified.)
 - d. When only one (1) source possesses patents or exclusive rights to manufacture or to furnish the item or service.

- e. Other extenuating circumstances or considerations include, as applicable, adverse impacts on agency/Institute of not using the proposed source, and other considerations not previously stated.
3. Process. The APO must complete the following steps prior to finalizing a sole source acquisition.
- a. Conduct Market Research. To determine the appropriateness of a sole source acquisition, research must be conducted to determine if other products or service providers exist and can satisfy procurement requirements. Research resources include: Thomas Register, industry organizations, Internet searches, consultants, Requests for Information, Buyers Laboratory, advertisements or industrial publications.
 - b. Prepare Sole Source Justification. If the APO determines the needed good or service should be procured as a sole source acquisition, the APO must complete the Sole Source Justification Form.
 - c. Post Public Advertisement. Effective January 20, 2009, agencies must publish all intended sole source acquisitions with a value of \$5,000.00 or more to the Georgia Procurement Registry for a minimum of five (5) business days. In the event the value of the sole source acquisition is not within the agency's DPA, the agency must either submit the sole source to SPD for processing or request SPD's approval to conduct the sole source advertisement by submitting to SPD a one time request to exceed DPA. During the posting process, the agency must select appropriate NIGP Codes to facilitate advertisement of the sole source acquisition.
 - d. Invite Market Response. The purpose of publicizing the sole source notice is to offer other possible suppliers an opportunity to respond. Therefore, the GPR posting must include the following: a brief but descriptive summary of the good and/or service to be purchased, the identity of the sole source supplier, the completed Sole Source Justification Form and instructions to interested suppliers to file any challenges to the sole source determination in accordance with SPD's established process for resolving informal complaints and formal protests. The published sole source notice shall serve as the agency's notice of intent to award.

SAMPLE NOTICE: [Insert Agency Name] is providing public notice of its intent to award a contract to [Insert Name of Sole Source] to provide [Insert Description of Goods and/or Services.] [Insert Name of Sole Source] has been identified as the sole source for this purchase for the reasons stated in the attached Sole Source Justification Form. Any supplier capable of providing the identified goods/services may challenge this sole source determination by filing a written complaint/protest with the Assistant Commissioner of State Purchasing in accordance with Section 3.8 of the Georgia Vendor Manual. The complaint/protest must be received prior to the closing date identified herein.

- e. Resolve Challenges to Sole Source Determination. Effective January 20, 2009, in the event a supplier capable of providing the needed goods/services desires to challenge a sole source determination, the supplier must file an informal complaint/formal protest with the SPDAC prior to the close of the sole source

notice. Any such informal complaint/formal protest shall be resolved in accordance with the provisions of this manual.

- f. Contract Award. In the event the sole source determination is not successfully challenged, the agency may proceed directly to contract award.

6.10 Sole Brand

Before making a determination of Sole Brand, research must be conducted to determine if other products exist which can also satisfy procurement requirements in a timely manner. Sound procurement practice requires that a Sole Brand procurement be used only when it is the last justifiable option, and not as an attempt to contract for a favored product. An approved Sole Brand request allows for the insertion of “No Substitute” after the commodity is specified by brand name, model number, or some other designation identifying a specific product of a manufacturer.

In a Sole Brand situation, the end user or the APO must complete the Sole Brand Justification Form and do one of the following: attach it to the appropriate file when the procurement is handled at the agency level or attach it to the Purchase Requisition form when the procurement is to be handled by the SPD.

The following information must be included:

1. Scope of Work:

Information to establish the context of the sole brand, for example, the function of the item or service function. Provide where and how the item or service is to be used, operational environment, and previous experience or history. Identify any efforts made to locate other possible sources, such as review of Thomas Register, Industry Organizations, and Internet searches, Consultants, Requests for Information, Buyers Laboratory, and Advertisements in Industry Publications and contact with Buyer.

2. Sole Brand Justification:

Some requirements may need to be provided by a certain manufacturer, for example, “to match existing uniforms.” Explain why only a particular style, type or manufacturer is acceptable. A request for “Sole Brand” does not automatically eliminate bidding requirements, as the item may be available from more than one vendor.

6.11 Pre-Bid Procurements (Expedited Procurement Method)

1. The APO identifies a need to expedite the purchasing process for a requirement, which exceeds their Delegated Purchasing Authority, but in no case in excess of \$100,000.00
2. The APO sends a written request to the appropriate Purchasing Acquisition Manager (PAM) in the SPD to obtain approval to handle the requirement as a pre-bid.
3. Upon written authorization from the PAM, the Agency issues an RFQ for the requirement making sure all purchasing guidelines are followed.

4. Once all bids are received, a copy of the RFQ, bid solicitation list, lowest bid meeting all requirements of the specification, bid tabulation, and any other pertinent information must be submitted to the PAM for review. If the Purchasing Acquisition Manager agrees with the Agency's recommendation for award, the APO will be given written approval to proceed with the award.
5. For an open market procurement, the APO issues a purchase order. For an agency contract, the APO issues the Notice of Award and any subsequent purchase orders.
6. The APO documents the file with the written approval received from State Purchasing to proceed with the award.

6.12 Purchasing Card

I. Program Overview

The State of Georgia Purchasing Card (P-Card) is a charge card designed to enable authorized, full-time State of Georgia employees to make small value purchases of supplies, materials, equipment, and services for State business use. The program streamlines payments by eliminating the administrative burdens and costs associated with traditional methods of payment.

The P-Card Program (Program) utilizes a VISA® purchasing card issued by Bank of America (Bank) pursuant to a contract awarded to the Bank by the Department of Administrative Services (DOAS) State Purchasing Division in July 2005. The card can only be used for official State of Georgia business and must be surrendered upon termination of employment for any reason or upon demand by the State of Georgia or by the cardholder's employer.

This purchasing card is the only purchasing card authorized for use by employees of any State Agencies, the Board of Regents, Colleges, Universities, and technical schools, referred to as "Entity", "Entities", or "Program users" in this policy.

All Entities are required to use the Works™ Payment Manager (Works™) system provided by the Bank, or other system approved by State Purchasing Division, for card administration and monthly billing statement reconciliation.

The terms of the contract with Bank of America also permit State Authorities and Commissions, local governments (counties), and municipalities to use the program. DOAS recommends that local entities participating in the program adopt and adhere to this Statewide Purchasing Card Policy; however, DOAS also recognizes that local governments are ultimately accountable not to DOAS but to the county Boards of Commissioners, city councils, or other governing bodies which approve local government budgets and oversee local government financial affairs. Accordingly, it is the responsibility of the appropriate governing body to put in place a purchasing card policy and ensure their local entity adheres to that policy.

The State Cards Program Manager approves all participation in the program.

All card program official forms mentioned in this policy can be found on the State Purchasing Division web site at <http://statepurchasing.doas.ga.gov>. The versions on the web site will always be the latest versions.

II. Use of the Purchasing Card for Personal Purchases Prohibited

Under no circumstances is a cardholder permitted to use the P-Card for personal purchases. Using the P-Card for personal purchases will result in disciplinary action, up to and including termination from State employment and criminal prosecution. The Official Code of Georgia, Annotated (O.C.G.A.), §50-5-80 states that any cardholder who knowingly uses the card for personal purchases under \$500 is guilty of a misdemeanor. A cardholder who knowingly uses the card for personal purchases of \$500 or more is guilty of a felony punishable by one to 20 years in prison. Supervisors or other approving officials who knowingly, or through willful neglect, approve personal or fraudulent purchases are subject to the same disciplinary actions as cardholders.

Criminal background checks are to be done on all cardholders as explained in Section VII, Legal Issues, paragraph B, of this Policy.

III. Statewide Program Administration

A. State Purchasing Card Policy

The DOAS State Purchasing Division (SPD) administers the contract on a statewide level. In this capacity, SPD personnel serve as resources for all program users in the areas of policy development and implementation, day-to-day administration of the program on a statewide level, audit, staff development, and cardholder training.

SPD has developed this State Purchasing Card Policy (Policy) to establish minimum standards for use of the P-Card in order to ensure compliance with all applicable State laws pertaining to purchasing as contained in the Georgia Procurement Manual (GPM), issued by SPD. The Policy posted on the SPD web site will always be the official Policy governing the P-Card program. The effective date of the policy will be in the footer of the document. SPD will maintain an archive of previous versions of the Policy, which will be available upon request should the need arise.

B. State Cards Program Manager

The State Cards Program Manager will:

1. Develop the State Purchasing Card Policy.
2. Review the Policy at least annually to ensure that it is in keeping with “best practices” in the purchasing card industry and that it allows participants in the Program to utilize the P-Card to its utmost advantage in the procurement process within sufficient controls guidelines.
3. Work with other areas of SPD and with other Program users to determine new ways that the P-Card can be used within legal and Policy requirements.

4. Serve as a central point of contact on all issues of policy and procedure. This position is the official liaison between the Bank and all Program users.
5. Communicate all Program and Policy changes to Program users.
6. Review all requests for exceptions to this Policy and decide on the appropriateness of each request.
 - i. Approvals for the following policy exceptions are coordinated through the local Card Program Administrator once original approval is granted by the State Cards Program Manager:
 - (a) Increases in spending limits above State-mandated levels
 - (b) Approval to use the P-Card to pay for vehicle repairs and maintenance
 - (c) Permanent activation of a Merchant Category Code
 - ii. All other types of policy exceptions must receive prior, written approval from the State Cards Program Manager for each occurrence.
7. Develop and maintain statewide Program forms.
8. Collaborate with the DOAS Professional Development unit to develop and maintain statewide training materials and manuals.

C. Process Improvement and Audits

1. The DOAS Process Improvement and Audits unit conducts periodic reviews of the programs at Entities under SPD purchasing authority. Reviews take a risk-based approach and focus on the level of compliance with State Policy, adequacy of and compliance with internal policies and procedures, and evaluation of internal controls.
2. The unit issues reports providing an assessment of the Program, makes recommendations for improvement when warranted, and works with the Program personnel to implement action plans to make corrections or other improvements to the Program.
3. In those cases where it is determined that internal controls are not adequate, Process Improvement and Audits has the authority to require policy improvements and/or place other restrictions on the local card program until such controls are developed, documented, and implemented.

D. Professional Development

1. The DOAS Professional Development unit assists in developing and delivering training on the P-Card Program on a statewide basis.
2. The Bank is responsible for the implementation and initial training on the WorksTM system. The DOAS Professional Development unit will provide additional training in the system as needed.

3. Collaborate with the State Cards Program Manager and with DOAS Process Improvement to develop training materials for administrators, supervisors, cardholders, and auditors.

IV. Local Program Roles and Responsibilities

The Agency Procurement Officer (APO) or the College/University Procurement Officer (CUPO) serves as the official liaison between the Entity and the State Cards Program Manager for all matters related to the local Program. This individual usually serves as the Purchasing Card Program Administrator (Administrator), although any or all of the following administrative responsibilities may be delegated to one or more Card Program Coordinators, depending on the size and complexity of the local program.

A. Card Program Administrator

1. Program Administration

- i. Develop the internal policy governing the use of the P-Card, to include, the following minimum requirements:
 - (a) In compliance with the State Purchasing Card Policy;
 - (b) Unique needs based on mission;
 - (c) Responsibilities of Program personnel;
 - (d) Criteria for obtaining a P-Card;
 - (e) Acceptable use of the P-Card that cannot be less restrictive than State Purchasing Card Policy;
 - (f) Method for reporting suspected misuse or fraudulent use;
 - (g) Consequences of misuse or fraudulent use;
 - (h) Provision for review of the internal policy for adequacy at least annually; and
 - (i) Provision for audit or other independent review of all areas of program administration and transactions at least annually.
- ii. Work with management throughout the organization to determine the appropriate spending limits for the Program as a whole and for individual cardholders based on budget constraints, cardholder job responsibilities, historical spending patterns, and overall procurement practices.
- iii. Register as Card Program Administrator with the State Cards Program Manager using Form SPD-CC001, Designation of Card Program Administrator. After initial registration, notify State Cards Program Manager of any changes in local Program Administrator information using Form SPD-CC001, Designation of Card Program Administrator.
- iv. Designate the following Program administrative positions as needed and ensure coordination among the positions:
 - (a) Card Program Coordinators;

- (b) Electronic Contact to handle data transmission matters; and
 - (c) Settlement Contact to handle monthly payment matters.
- v. Work with management to identify job titles/positions within the organization that require a P-Card or that would be good candidates for use of the P-Card.
- vi. Develop written internal procedures for requesting P-Cards and approving cardholders. The appropriate form is the Purchasing Card Profile, Form SPD-PC002.

2. Program Compliance

- i. Establish written procedures to ensure compliance with, or request exceptions to, State purchasing laws and regulations, the Georgia Procurement Manual, the State Purchasing Card Policy, and the internal purchasing card policy.
- ii. Coordinate any exceptions to the State Purchasing Card Policy with the State Cards Program Manager.
 - (a) Initiate all requests using the Special Approval Request, Form SPD-PC003.
 - (b) Document review of the status of all exceptions on an annual basis to determine if the exceptions should still be granted and notify SPD of any revocations.
- iii. Ensure that the Entity has sufficiently documented internal controls and other measures (e.g. audits) to prevent and/or detect misuse or fraudulent use of the P-Card.
- iv. Establish written procedures to ensure security over P-Card account information to include:
 - (a) Ordering and receiving new and replacement cards;
 - (b) Reporting lost or stolen cards to the Bank and to the Program Administrator and/or Coordinator(s);
 - (c) Collecting and destroying cards when cardholders transfer to jobs not requiring a P-Card, resign, or are terminated; and
 - (d) Canceling cards in the WorksTM system immediately upon notification of theft/loss of the card or upon termination of cardholder's employment for any reason.
- v. Establish written procedures to ensure that misuse or fraudulent use of the P-Card is documented. Minimum requirements include:
 - (a) Documentation of the transaction (e.g. copies of receipts, invoices);
 - (b) Evidence of who conducted the transaction, who approved the transaction, and when and how the misuse or fraud was discovered; and

- (c) Documentation of personnel actions taken (e.g. cardholder was terminated).
 - (d) Notifying the Bank immediately when fraud or card misuse occurs in order to properly meet the Bank's guidelines regarding Bank reimbursement of transactions related to fraud or card misuse.
- 3. Appropriate limits on the number of cardholders assigned to a supervisor or approving official in order to ensure adequate review of business need and documentation (transaction logs, receipts/invoices, and monthly billing statement) for each purchase.
- 4. Training – Develop an Entity-specific training program for all cardholders and supervisors/approving officials to include:
 - i. Mandatory Cardholder Agreement specifying terms and conditions for use of the card;
 - ii. State Purchasing Card Policy;
 - iii. Internal purchasing card policy;
 - iv. User manual; and
 - v. Familiarity with all forms, including the Sales and Use Tax Exemption form and transaction log.
- 5. Using the P-Card
 - i. Establish written internal procedures covering how to use the P-Card, including telephone, fax, and Internet orders, in order to maintain security over P-Card account information.
 - ii. Monitor cardholder accounts for inactivity and close accounts that are no longer needed.
 - iii. Establish written internal procedures for compliance with State Policy regarding documentation of transactions.
- 6. Accounting Requirements
 - i. Designate the storage location for all original transaction documentation.
 - ii. Establish billing discrepancy procedures, including disputed transactions.
 - iii. Establish reconciliation procedures between cardholders, supervisors/approving officials, and Accounts Payable to ensure timely payment of the corporate monthly billing statement.

B. Supervisors / Approving Officials

Supervisors or other persons assigned the responsibility of reviewing cardholder transactions must have a thorough knowledge of the job responsibilities of the cardholders under his/her supervision in order to determine if purchases are reasonable in terms of types of purchases made. Before approving the purchasing card log and/or monthly billing statement, the supervisor must carefully review all documentation.

Supervisor responsibilities include:

1. Maintain knowledge of State Purchasing Card Policy and internal policies and procedures on use of the P-Card.
2. Request P-Cards for employees under his/her supervision.
3. Notify the Program Administrator when a cardholder resigns, transfers, or is terminated from employment.
4. Monitor transactions and card activity to ensure that all purchases are for legitimate State business use.
5. Review all documentation to ensure:
 - i. Invoices/receipts and transaction logs have the required information;
 - ii. State Sales and Use Tax was not charged;
 - iii. Purchases were for legitimate State business use;
 - iv. Transaction logs and cardholder monthly billing statements contain the cardholder's original signature;
 - v. Sign the monthly billing statement and/or cardholder transaction logs signifying review and approval for payment. This responsibility cannot be delegated to another person;
 - vi. All signatures must be original signatures. Signatures made with rubber stamps are prohibited;
 - vii. Submit all documentation and monthly billing statements for payment according to internally established procedures to ensure timely payment of the corporate billing statement.

C. Cardholders

All cardholders are de facto purchasing agents for the State of Georgia and their individual employers. Accordingly, all cardholders must have a minimum understanding of State purchasing laws, State Purchasing Division rules and regulations as contained in the Georgia Procurement Manual, and internal purchasing rules. Cardholders must also be familiar with the provisions of O.C.G.A. §45-10-1 et.seq. regarding State Employee Code of Ethics and Conflicts of Interest.

Cardholder responsibilities include:

1. Maintain security of the account number, expiration date, and security code at all times.
2. Maintain knowledge of State Purchasing Card Policy and internal policies and procedures.
3. Ensure all purchases are allowable purchases according to State and internal purchasing card policies.

4. Ensure all purchases comply with purchasing requirements of the Georgia Procurement Manual concerning Order of Precedence and Competitive Bidding.
5. Obtain “best value” for the State when making purchases with the P-Card.
6. Maintain all documentation required by State and internal purchasing card policies. Minimum documentation requirements are:
 - i. Monthly or weekly transaction log as determined by the Program Administrator and purchasing volume;
 - ii. Itemized receipt of invoice;
 - (a) If receipt has been lost and a duplicate cannot be obtained, the local PA can determine if internal policy will allow use of the Lost Receipt Affidavit, Form SPD-PC005. If allowed, a single cardholder can use the form no more than three times in one fiscal year.
 - (b) Use of the form more than three times in one fiscal year will result in suspension of card privileges.
 - iii. Monthly billing statement sent to the cardholder from the Bank.
7. Sign the transaction log and the monthly billing statement. All signatures must be original signatures. Signatures made with rubber stamps are prohibited.
8. Submit all documentation to the supervisor or other approving official by internally established deadlines in order to ensure timely payment of the monthly billing statement.

II. Use of the Card

This Policy establishes appropriate and inappropriate uses of the card. All purchases made with the P-Card must be for official State business. Internal policies governing use of the card can be more, but not less, restrictive than State Policy.

Only the employee whose name appears on the face of the P-Card is authorized to initiate transactions with the card. Use of the card by any other person is considered misuse of the card, even if the purchase is for legitimate State business.

Use of the card for personal purchases is strictly prohibited and will result in disciplinary action, including termination of employment and criminal prosecution.

A. Allowable Purchases

The P-Card can be used for small value purchases of supplies, materials, equipment, or services, where not otherwise prohibited or restricted. All purchases must be within cardholder assigned spending limits unless prior, written approval is received to exceed these limits. Card Program Administrators can manage spending limits up to \$5,000. Any Single Transaction Limit of

\$5,000 or more must receive prior written approval from the State Cards Program Manager using the Special Approval Request, Form SPD-PC003.

Allowable purchases are:

1. Equipment – Single units under \$1,000 for State Agencies, Commissions, or Boards, and under \$3,000 for colleges and universities under the authority of the Board of Regents. Agency policy must address inclusion in or exclusion of specific types of equipment from any asset inventory systems.
2. Supplies and materials up to the cardholder's approved Single Transaction Limit and/or approved cycle limit.
3. Single purchase of supplies and materials over \$5,000 provided the following requirements one of the following requirements has been met:
 - i. Statewide Contract (SWC), Agency Contract, or mandatory source:
 - (a) No prior approval from the State Cards Program Manager is needed to exceed \$5,000.
 - (b) Documentation must include reference to the SWC or Agency contract number.
 - ii. Open-Market Purchases:
 - (a) Purchase has been competitively bid using eQuote, the Georgia Procurement Registry, or other electronic solicitation tools;
 - (b) Cardholders have prior, written approval from the local Program Administrator, his/her supervisor, and the State Cards Program Manager using Form SPD-PC003, Purchasing Card Special Approval Request, to exceed the State STL.
4. Airline tickets and vehicle rentals for State personnel traveling on official State business as defined in the State Travel Regulations published by the State Accounting Office and the Office of Planning and Budget.
5. Special approval is not needed for the following types of purchases, within approved spending limits, for Colleges, Universities, and technical schools when such purchases are for official student activities:
 - i. Food and lodging for student activities (but not faculty, staff, coaches, other school employees, volunteers, or other persons not related to the school) when on official school business (e.g. athletic team travel). Documentation must follow guidelines for "group meals" in the State Travel Regulations:
 - (a) Itemized receipt showing all meals purchased
 - (b) Roster of participants showing name and signature of each student (for activities not open to the entire campus – e.g. athletic teams, student clubs)
 - (c) Copy of team schedule or other documentation showing that the meal was an authorized student activity

- ii. Food for official research, laboratory animals, or instructional (classroom) use.

B. Prohibited Purchases

The following types of purchases are strictly prohibited by State policy. No exceptions will be granted unless otherwise indicated. This list must be included in lists of prohibited purchases in policies at the local program level:

1. Personal purchases of any kind
2. Cash advances
3. Gift cards
4. Employee travel expenses, including lodging, transportation, and meals, except as specifically covered under Allowable Purchases
5. Entertainment, including in-room movies
6. Alcohol
7. Tobacco products
8. Fuel, repairs, and maintenance of State-owned or rental vehicles (exceptions can be granted upon verification of procedures to enter costs into Maximo, the State's fleet management system administered by the DOAS Office of Fleet Management)
9. Professional services as defined in O.C.G.A. §14-7-2(2)
10. Food, unless the purchase qualifies as a "group meal" according to the State Accounting Office Group Meal Policy or as specifically covered under Allowable Purchases for Colleges, Universities, and technical schools.

C. Declared Emergencies and Natural Disasters

The GPM grants authority to forego standard procurement requirements for needs arising from unforeseen causes. In cases involving the welfare of the general public, extreme weather conditions, or official declared emergencies, the Program Administrators are allowed to obtain after-the-fact approval for exceptions to this Policy.

1. The Program Administrator must submit the Form SPD-PC003, Special Approval Request, to notify the State Cards Program Manager within 72 hours of any actions taken in response to these emergencies and the nature of the actions taken.
2. Documentation for transactions must follow guidelines for emergency purchases as contained in the Georgia Procurement Manual, including use of Form SPD-NI005, Emergency Justification Form, available in the SPD Official Forms section of Agency Resources on the State Purchasing Division web site.

D. Sole Source / Sole Brand Purchases

Guidelines for Sole Source and Sole Brand purchases are found in the Georgia Procurement Manual.

1. Any request for a Single Transaction Limit of \$5,000 or more that would qualify as a Sole Source and/or Sole Brand must include Form SPD-NI003a, Sole Brand Justification, or Form SPD-NI004a, Sole Source Justification, or both as applicable.
2. These forms, and instructions for use, are available on the State Purchasing Division web site. These forms must also be attached to the transaction log and/or monthly billing statement as documentation for the transaction.

III. Program Compliance

A. Merchant Category Code Authorizations

Merchant Category Codes are assigned by a merchant's or vendor's merchant bank based on the type of goods or services that merchant or vendor typically provides. Allowing or blocking certain MCC's, while not a fail-safe protection against unauthorized use of the card, does provide a measure of protection against unauthorized or prohibited purchases.

1. The State Cards Program Manager establishes the State-authorized MCC groups that will be available to all Entities. Only those MCC's associated with merchants which provide the goods and services specifically allowed by this Policy are eligible for inclusion in State-authorized groups. Transactions at non-authorized MCC's are denied at the point-of-sale.
2. The State Cards Program Manager will conduct periodic evaluations of authorized MCC's in order to maximize appropriate use of the P-Card. The Program Manager will consult with other procurement and card program personnel within State Purchasing Division and/or outside State Purchasing Division when establishing or modifying these groups.
3. Entities can request activation of additional MCC's for inclusion in a State-authorized group and/or approval to create an MCC group to meet specific needs. Program Administrators can request prior, written approval for exceptions to this policy using Form SPD-PC003, Special Approval Request.

B. Internal Controls

Each Entity's internal purchasing card policy must establish an internal control structure that ensures compliance with State purchasing laws, State Purchasing Division rules and regulations as found in the Georgia Procurement Manual, State Purchasing Card Policy, and internal policy.

Internal controls must include:

1. Appropriate separation of duties between making transactions (cardholders), review and approval of transactions for payment (approving officials), and payment of the monthly billing statement (Accounts Payable).
2. Weekly independent review of all card maintenance activity if the Card Program Administrator is also a cardholder.

3. Appropriate hierarchical review and approval of purchases by someone with supervisory authority over the cardholder and/or with the authority to question purchases if needed.
4. No cardholder can provide approval for payment for his/her transactions or of the corporate monthly billing statement. Review and approval responsibilities cannot be delegated to someone else.
5. Appropriate limits on the number of cardholders assigned to a supervisor or approving official in order to ensure adequate review of business need and documentation (transaction logs, receipts/invoices, and monthly billing statement) for each purchase.
6. Provision for an annual independent audit or review of the purchasing card program by the Card Program Administrator, Internal Audit unit, or other unit assigned audit responsibilities. Reviews must address:
 - i. Adequacy of internal policies and procedures;
 - ii. Appropriateness of cardholder spending limits;
7. Adequacy of review, reconciliation, and payment procedures; and
8. Adequacy of documentation for transactions.

C. Cardholder Spending (Credit) Limits

Spending limits enable management to provide cardholders with the purchasing power to accomplish the needs of the job without exposing the State or the organization to unnecessary risk. Spending limits should be based on job responsibilities of the cardholder and/or of the job title. Cardholder spending limits must be reviewed at least annually to determine that actual usage is consistent with spending limits.

Spending limits that are available are:

1. Cycle (Credit) Limit – The cycle limit is a mandatory spending limit that restricts the amount of purchases a cardholder can make in one billing cycle.
 - i. The cycle limit cannot be less than the cardholder's Single Transaction Limit.
 - ii. A cardholder's cycle limit cannot be more than \$10,000 without prior, written approval from the State Cards Program Manager.
2. Single Transaction Limit (STL) – The STL is a mandatory spending limit imposed on each cardholder account.
 - i. A cardholder's STL must be less than \$5,000. The local Program Administrator can establish organization-wide and/or individual spending limits less than this, as determined by overall procurement and card program goals.
 - ii. Program Administrators can request prior, written approval for individual limits greater than or equal to \$5,000. Administrators must establish controls to ensure that cardholders:

- (a) Make purchases only from Statewide Contracts (SWC), Agency contracts, or mandatory sources since the bid process has already been conducted or
 - iii. Follow appropriate competitive bid procedures, including use of eQuote and/or the Georgia Procurement Registry (GPR).
 - 3. Number of Transactions per Day (optional) – Management can choose to impose a maximum number of transactions on a cardholder account in order to control use of the card.
- D. Card Issuance Requirements
- 1. Issuance is limited to one Purchasing Card per cardholder.
 - 2. Cardholders must be full-time State employees. There will be no exceptions to the following:
 - i. Cards will not be issued to part-time employees, temporary workers, or contractors.
 - ii. Cards will not be issued in the name of a Department or work unit to be shared by multiple employees.
 - iii. Cards will not be issued to employees of foundations associated with any Entity.
 - 3. An employee's supervisor and the local Card Program Administrator must approve a cardholder's application for a P-Card. The appropriate P-Card application form is Form SPD-PC002, Purchasing Card Profile, or approved equivalent that contains at least the same information.
 - 4. All training requirements as described in this Policy must be met before an employee receives the P-Card.

IV. Legal Issues

A. Failure to Comply with Laws, Policies, and Procedures

Cardholders or supervisors/approving officials who knowingly, or through willful neglect, fail to comply with the following may be subject to suspension or termination of card privileges or other disciplinary action, up to and including termination of employment and criminal prosecution to the fullest extent of the law.

- 1. Official Code of Georgia, Annotated (O.C.G.A.), sections related to governmental purchasing
- 2. Applicable requirements of the Georgia Procurement Manual
- 3. State Purchasing Card Policy
- 4. Internal policies and procedures governing procurement and the Purchasing Card Program.

The State Cards Program Manager and State Purchasing Division reserve the right to withdraw any authority or delegated approval due to non-compliance with

applicable laws, rules, regulations, policies, and procedures, or the terms of any conditional approval.

B. Cardholder Background Checks

O.C.G.A. §50-5-83(b)(12) requires criminal background checks on all employees hired for positions that are eligible for P-Cards.

1. Existing Cardholders as of July 1, 2008:

- i. Agencies and Institutions must establish a schedule of criminal background checks for existing cardholders as of July 1, 2008, to ensure that backgrounds are checked prior to the next renewal date of the individual P-Cards.
- ii. If any criminal background check against existing cardholders reveals any misdemeanors or felonies related to financial wrongdoing, theft, or other act of dishonesty, the cardholder's privileges are to be terminated immediately and notification sent to the State Cards Program Manager.

2. New Cardholders after July 1, 2008:

- i. For new cardholders after July 1, 2008, prior to receiving a P-Card, each Agency or Institution must perform criminal background checks on the prospective cardholders.
- ii. If any background check of new cardholders after July 1, 2008, reveals any misdemeanors or felonies related to financial wrongdoing, theft, or other act of dishonesty, the employee is not eligible to receive a P-Card.

C. Cardholder Credit Checks

In addition to background checks for new and current cardholders, O.C.G.A. §50-5-83(b)(12) also requires credit checks on all employees issued a purchasing card after July 1, 2008.

D. Competitive Solicitation

1. O.C.G.A. §50-5-69 requires competitive bidding for all open-market purchases anticipated to be \$5,000 or more. Use of the P-Card as a method of payment does not relieve the cardholder or the Entity of these responsibilities.
 - i. Because of the legal bid limits, all cardholders must have a Single Transaction Limit (STL) of less than \$5,000, except as noted below in section C.2.
 - ii. Cardholders are prohibited from splitting a transaction between two or more transactions on a single card or two or more transactions on multiple cards on the same day or on separate days in order to circumvent the bid process and/or any Single Transaction Limit, regardless of the level.
2. Where job responsibilities require cardholders to make single purchases of \$5,000 or more:
 - i. The local Card Program Administrator can approve Single Transaction Limits over \$5,000 with the approval of the cardholder's supervisor and

the APO / CUPO when the purchases will be from a statewide contract, an Agency contract, or a mandatory source. However, this approval does not apply to open-market purchases.

- ii. The local Card Program Administrator must use Form SPD-PC003, Special Approval Request, to obtain one-time approval from the State Cards Program Manager for any single open-market purchase of \$5,000 or more.
3. Cardholders who need to make open-market purchases of \$5,000 or more must use an informal bid process for any purchase greater than or equal to \$5,000 and less than \$10,000.
 - i. For any purchase of \$10,000 or more, cardholders must use the eQuote system or the Georgia Procurement Registry to obtain bids from the appropriate number of bidders.
 - ii. One-time approval to exceed \$5,000 will be granted upon submission of proof of the competitive bid process. Transaction documentation must include evidence of the appropriate bid process and be available for audit by the State Cards Program Manager, the SPD Process Improvement unit, or Internal Audit personnel.

E. Payment of State Sales and Use Tax

1. O.C.G.A. §48-8-3(1) exempts purchases made by Agencies from State Sales and Use Tax when payment is made with appropriated funds.
2. O.C.G.A. §48-8-3(8) exempts purchases made by the Board of Regents, Colleges, and Universities from State Sales and Use Tax.
3. Cardholders must present the Department of Revenue Sales and Use Tax Exemption, Form ST-5, to merchants upon request. This form is available on the Department of Revenue web site at etax.dor.ga.gov by searching for ST-5.
4. Cardholders are responsible for ensuring that merchants do not charge tax.
 - i. If taxes are charged, the cardholder must contact the merchant to obtain a credit to the card.
 - ii. Credits cannot be obtained by any other method, including, but not limited to, cash, gift card, gift certificate, or store credit.
 - iii. Documentation of attempts to obtain credit for any State Sales and Use Tax charged in error must be maintained with the documentation for the transaction where the tax was charged.

F. Records Retention Requirements

The Office of the Secretary of State maintains the official Records Retention Schedule for the State of Georgia. This information is available on their web site at sos.georgia.gov by searching for Records Retention Schedule.

1. Documents related to transactions are accounting records and must be maintained according to the requirements of Accounts Payable Files.

2. Documents related to the issuance of cards to employees are accounting records and must be maintained according to the requirements of Credit Card Administration Records.

G. Internal Revenue Service 1099 Reporting

1. Sections 6041 and Section 6041A of Internal Revenue Service (IRS) rules require any organization, including governments, to report “reportable transactions” in excess of \$600 per year using the Form 1099-MISC. Each Entity is responsible for establishing procedures to ensure compliance with all federal laws applicable to reporting purchases from these vendors.
2. The Bank provides all Program Administrators with access to the VISA® Information Management System. This system reports purchases at the MCC’s that the IRS has designated as “reportable” for purposes of issuing the Form 1099.

6.13 Emergency Purchases

1. Unless otherwise prohibited by State Purchasing, agencies are authorized on their own behalf to purchase in accordance with O.C.G.A., and to report such purchases to State Purchasing. Therefore, SPD approval is not required in advance of an emergency purchase.
2. Emergency circumstances exist where normal purchasing procedures cannot be utilized without extremely detrimental effects upon the operation of the Agency and the State’s business. The purchase should be handled by the APO using Open Market purchasing practices, as appropriate. The purchase order should provide documentation as to the circumstances surrounding the emergency and should clearly state “emergency purchase” on the face of the purchase order (PO).
3. The APO must provide written justification and a copy of the PO and all pertinent documentation to the SPD relating to the purchase transaction after the purchase.
4. The APO will issue a PO to the vendor marking the PO “Emergency Purchase”.

6.14 Surplus Property

The APO should determine if the item is available from various surplus property, such as property available for transfer that is not covered under Mandatory Source.

If the item is available from Surplus Services, the APO should prepare and issue a purchase order for the specific requirements or the Agency can make payment with a government purchase card. Purchase orders should be coded as an open market with a comment on the purchase order stating that this purchase is from a governmental source.

The buyer for the Agency should physically inspect such items offered for transfer and, if suitable, make payment and take possession of the items at once.

NOTE: To secure an item from State or Federal Surplus Property, the APO should refer to the following Surplus and Supply web site link.

<http://gasurplus.doas.state.ga.us/apps/gss/surplus.nsf>

6.15 Purchase of Used Equipment

When purchasing used equipment, the APO should determine if the equipment is suitable for intended use and is as economical to use as new equipment. In doing so, the following requirements shall be met:

1. The APO shall determine if any comparable specifications can be obtained.
2. The APO shall determine if there is a market for the commodity and who can supply the commodity.
3. The APO shall have used equipment examined by qualified personnel who will furnish a written certification as to the condition and value to the agency. This certification should include good working condition for intended use, price comparisons to comparable used equipment, and substantial savings versus comparable new equipment.

After reviewing the above requirement and determining that no comparable specification can be written and that there are no other vendors to supply this equipment as a used commodity, the APO shall prepare a PO with all documentation of findings attached, process the PO as a Sole Source Procurement, and maintain a copy of the documents in the contract file. There must also be a letter from the vendor indicating the price for the used equipment and any warranty they might offer. If the purchase exceeds the Agency's Delegated Purchasing Authority, the APO shall prepare the requisition for the SPD and ensure that all necessary documentation is in order. The SPD will process the requisition as a Sole Source Procurement. If the documentation is not justifiable, the SPD will process the purchase order as an Open Market procurement.

Section 7: Special Approvals

Special approval requisitions must have prior approval before the SPD can begin the purchasing process. In these instances, the APO is advised to plan well in advance and submit required information to the appropriate special approval authority as soon as possible.

7.1 Office of Fleet Management Approval of Motor Vehicles

All purchase orders for motor vehicle purchases shall be processed in the following manner:

1. The APO shall obtain approval from DOAS Office of Fleet Management (hereinafter "OFM") to purchase vehicles.
2. If the purchase request is approved by OFM, the purchase order(s) must be forwarded to OFM for review and signature approval.

3. Once OFM has determined that the purchase order(s) is compliant, the OFM will forward the approved purchase order(s) to the APO with authorization to release the order to the appropriate contractor.
4. If the purchase order(s) were non-compliant, OFM will deny and return the purchase order(s) to the APO with a disposition.
5. Every transaction is independent. If DOAS OFM approves the Agency purchase request for a particular vehicle no substitutes are allowed after the fact. The Agency must submit a new request to the DOAS OFM if the type of vehicle is different than originally submitted.

7.2 Technology Products and Services

The legislature established the Georgia Technology Authority (GTA) in July 2000. GTA is responsible for the procurement and operation of all the information technology (IT) and telecommunication products and services for the state of Georgia. Requests for technology procurements must be submitted to GTA for review.

7.3 Trade-In of Used Equipment

1. The APO must contact DOAS Surplus Property for approval to include the disposal of used equipment in the procurement of similar new equipment. Upon receipt of approval from Surplus Property, the Agency may include the trade-in of used equipment in the procurement of new equipment. The APO should follow normal procurement procedures.
2. The APO should list the used equipment and provide detailed information of the equipment, including but not limited to make, model, age, condition, serial number and location. The equipment may be offered for public inspection during the procurement process.
3. It is recommended that the equipment to be traded in be listed separately to allow the Agency the option of accepting the trade-in value offered by the vendor or not.

Section 8: Inspection of Plant and Audit of Records

8.1 Right to Inspect Plant

By submitting a bid or proposal to the State, the bidder/offeror agrees to permit the State the right of inspection at the bidder's/offeror's plant or warehouse. Upon request, the bidder/offeror shall provide all reasonable facilities and assistance for the safety and convenience of the State's appointed representative in the performance of such inspection.

8.2 Right to Examine Records

DOAS shall have the power to examine books, records, and papers of any board, department, commission, institution, or office of the state government relative to purchases and to require those in control thereof to furnish the department with copies of any and all records pertaining thereto. At the direction of the Governor, the department shall report in such detail as may be required any purchase or purchases made by any such branch of the state government.

8.3 Procurement Records

Each procurement file should be identified so it can be readily located and referenced. All purchasing transactions should be supported with appropriate documentation. The agency may maintain the files either in hard copy or in electronic form as long as the documentation is accessible to the team. It is important that documentation maintained in electronic form has the same level of detail that would be available in hardcopy, including authorized signatures.

8.4 Purchasing Process Reviews

1. Purpose of the Review

The SPD will conduct Purchasing Process Reviews of the purchasing practices of all agencies that fall under the purview of the SPD. The purpose of the review is to determine if agencies are complying with Georgia's purchasing statutes and rules, and whether they should continue to have the same level of delegation, have it reduced, or qualify for an increase.

2. Preparation

- a. The SPD staff may enter the premises and obtain an agency's purchasing records for the purpose of the Purchasing Process Review. The agency shall cooperate with the review staff, provide them with requested records, adequate office space for conducting the review, and ensure that agency purchasing staff is available for discussion of purchasing transactions. A typical review lasts three (3) days.
- b. The SPD purchasing staff will send an Engagement Letter to the Agency at least thirty (30) days prior to the review. The SPD will also send an Internal Controls Questionnaire; Engagement Outline; and a Purchasing Staff Survey form which must be returned to the SPD within 14 calendar days after receipt. The SPD will request the Agency to submit a copy of the Agency's Internal Policies and Procedures Manual, and a Purchasing Card Manual within 14 days prior to the review.

3. Entrance Conference

Upon arrival, the review team will conduct an interview with the APO. The In Charge Auditor will ask questions pertaining to the internal controls of the Agency.

4. Field Work

The SPD team will review the following:

- a. Administrative Controls
- b. Competitive Purchases
- c. Agency Contracts
- d. Statewide Contracts
- e. Mandatory Sources
- f. Purchasing Card

5. Exit Conference

The review team will conduct an exit conference with the APO. During the conference the In Charge Auditor will discuss the findings and will highlight areas of non-compliance as well as recommendations for corrective action. The team will prepare a draft report and will provide the agency with a copy within two (2) weeks following the review. The agency will be given thirty (30) days to respond to the team findings. The response should contain supporting documentation and any corrective action that the Agency is planning to take in accordance with the review team's recommendations.

6. Finalizing the Report

The SPD will take the agency's response into consideration before providing the final report. The report will be provided to the Agency Head with a copy to the APO, SPD, Department of Audits, and the Board of Regents as appropriate.

7. Impact

The results of the Purchasing Process Review will be taken into consideration by the SPD in reviewing the appropriateness the agency's Delegated Purchasing Authority dollar threshold.

8.5 Desk Audits

The SPD will conduct desk audits of Agency procurement operations. These audits will be conducted using the state's financial system.

1. Audit Process

The review team will conduct electronic sampling of the Agency's purchase orders to determine compliance with the GPM. The review may include but is not limited to the following:

- a. Evidence that the bid evaluation was completed and that award was based on the lowest responsive/responsible bidder; documentation regarding any rejected bids.
- b. Competitive bidding process over \$5,000.00
- c. Multiple purchases

- d. Number of bids solicited
 - e. Delegated Purchasing Authority
 - f. Signatures on purchase orders
 - g. Mandatory source requirements
 - h. Correct use of sole source and sole brand procedures
 - i. Correct use of statewide and agency contracts
 - j. Approvals
 - k. Delivery and payment terms
 - l. Purchase Order Types
 - m. Purchase Coding
 - n. Posting to the Georgia Procurement Registry
2. Purchasing Process Review Report

The review team will conduct a telephonic exit briefing with the APO. The Agency will be provided with a draft report and will be given an opportunity to respond. The Agency's response will be taken into consideration and will be incorporated into the final report. The time frame for finalizing the report is the same as on-site reviews. The distribution is the same as with on-site reviews.

Section 9: Determinations and Reports

9.1 Finality of Determinations

The determinations required by the following are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law: Competitive Sealed Bidding, Correction or Withdrawals of Bids made by Issuing Officer, Cancellation Awards, Competitive Sealed Proposals, Contract Extensions and Renewals, Award, Sole Source Procurement, Emergency Procurements, Special Procurements, Responsibility of Bidders and Offerors, Determinations of Non-responsibility, Types of Contracts, and Multi-Year Contracts.

9.2 Reporting of Anti-Competitive Practices

When for any reason collusion or other Anti-Competitive practices are suspected among any bidders or offerors, a notice of relevant facts shall be submitted to the Attorney General.

9.3 Retention of Procurement Records

[The Georgia State Records Management Program](#) provides guidelines and standards to state and local government agencies.

1. Duty of Agencies

Each Agency is responsible for establishing its retention schedule. Agencies may retain records in an electronic format as long as the records contain the same information in the electronic format that is contained in the hard copy of the record.

2. Retention Schedule in the SPD

- a. The SPD retention schedule for agency contract and RFP files requires retention for six (6) years following the cutoff when the contract becomes inactive upon expiration of contract. Files should be pulled and transferred at the end of the fiscal year.
- b. The SPD retention schedule for construction files has a statute of limitations of six (6) years. Upon expiration of a construction file, it is designated inactive and the cutoff date is at the end of that fiscal year. This inactive file should remain in the current files for one additional year and afterward should be transferred to archives and held for five (5) years, then destroyed.
- c. The SPD retention schedule for Statewide Contract files has a statute of limitation of six (6) years. Upon expiration of the contract, transfer to inactive file. Cut off the inactive file at the end of each fiscal year, then hold in current file area one (1) year, then transfer to State Records Center, hold five (5) years; then destroy.
- d. The SPD retention Schedule for Open Market Purchases has a statute of limitations of five (5) years. These records are microfilmed and then held in the current file area for nine (9) months and then destroyed. The microfilm negative is maintained in-house for five (5) years or until no longer needed for reference, then destroyed. The duplicate negative is transferred to the State Records Center for security storage and is held for five (5) years and then destroyed.

Chapter 4: Specifications

Section 1: Specifications

DOAS has the authority to establish standard specifications for purchases of the State of Georgia for all supplies, materials, and equipment purchased or to be purchased for the use of the state government for any of its departments, institutions, or agencies. The APO should assist the end-users in the preparations of specifications.

Preparing specifications involves three major considerations which include: design consideration of function; manufacturing considerations of economical production; and procurement considerations of markets, materials availability, supplier capabilities, and cost. The function of an effective specification should be to identify minimum requirements, allow for a competitive bid, list reproducible test methods to be used in testing for compliance with specifications, and provide for an equitable award at the lowest possible cost.

There are many available sources that can be of assistance in specification preparation, such as: state, local and Federal governmental agencies; manufacturer and distributor sales, literature and company web sites; the National Institute of Governmental Purchasing and Technical Information Exchange program; Association of users, manufacturers and technical societies; and staff personnel. The State cannot accept or award bids for a solicitation from vendors who received compensation from the agency to participate in the preparation of specifications for which the solicitation is based.

1.1 Performance Specifications

Performance specifications are based on the expected result, or performance, of a product or service. The technical specifications describe the functional requirements of the user. Neither the manufacturing process nor product composition is specified, but is left to the bidder to decide the best way to meet or exceed the requirements. This type of specification assures compliance of requirements and, in case of failure, the responsibility lies with the contractor. In addition, it assures inclusion of all applicable new product developments.

1.2 Design Specifications

Design specifications rely on how a product is made rather than what it does. Design specifications frequently use physical dimensions to describe the product. When at all possible, group terms (such as type, grade, class, and composition) should be used to designate items, and if further clarification is needed, then specify classifications (such as style, color, form, weight, and size) suitable for reference. Design specifications tend to restrict competition and, in cases of failure, the responsibility lies with the buyer. In addition, the cost of inspection to assure compliance with the design requirements may be costly.

1.3 Combination of Performance and Design Specifications

The combination of performance and design specifications effectively utilizes characteristics of both major specification types as prerequisites and as limiting factors in development. Other qualifiers which may be included in specifications are Brand or Trade Name, Qualified Products List (QPL), samples, and bidder's response form.

1.4 Alternative Specifications

1. Brand or Trade Name

A brand name and model number designates a specific product of a manufacturer as an example of the quality level of materials and workmanship desired. Items equaling or surpassing this quality level are understood to be acceptable. Therefore, the specification should always be stated "approved equal" to indicate that items equivalent in quality to the specified brand names will be acceptable. When used, brand name specifications should indicate that the brand is used merely as a reference and not as a statement of a preference for the specific product cited. If possible, more than one brand name may be used which are acceptable and meet specifications. In addition, brand names used should be known throughout the industry or have specifications that are readily available. The specification must name the salient characteristics which are to be used in comparing brands and determining the award, but also must clearly state that these factors are not the total consideration. This is accomplished by determining the minimum acceptable requirement levels or tolerances for the following: significant features, performance, quality, service availability, and compatibility. Use of manufacturer's descriptive literature (cut sheets) is NOT ACCEPTABLE.

2. Qualified Products Lists (QPLs)

Qualified Products Lists (QPLs) are a list of products maintained by an agency that meets established specifications. Manufacturers submit products for comparison and/or testing to the established specification. If the product meets the specification criteria, the product and model number are approved for the list. When the Request for Quote is issued, only those products listed on the QPL are considered for award. An Approved Brands List (ABL) is a form of QPL in that a list is maintained and it functions much the same way as a QPL. An example of an approved brands list is the statewide contract for office furniture.

3. Samples

Samples may be required to be submitted with a bid for comparison and testing in order to ensure compliance with a general or detailed specification. Sample comparison and testing have been useful for such items as waxes and floor finishes, paints, disinfectants and germicides, file cabinets, tires, cleaning agents, classroom furniture, printing forms, and art materials. The samples unidentified by manufacturer are subjected to various kinds of comparisons, ranging from visual inspection and evaluation to chemical and physical laboratory tests to in-use applications. Data and relative performance results must be documented, and

determinations made of the best value. Samples may also be of great value in ensuring compliance and satisfaction after award, before production, where final award of a contract is contingent upon a satisfactory pilot model or prototype. All samples must be maintained for ninety (90) days and awarded sample must be maintained for life of the contract.

4. Bidder's Response Forms

Bidder's response forms provide bidders an opportunity to respond to individual requirements. Supporting data must be submitted along with the Bidder's Response Form, such as vendor catalog pages and product specification sheets.

Chapter 5: Construction

Section 1: Contracting for Construction

This section outlines general policies for contracting for construction.

1. The user determines and transmits to the APO the unit's construction requirements.
2. The APO determines the user's exact need regarding specifications, conditions and schedule requirements.
3. The APO selects the Design Professional (Architect or Engineer) to prepare required drawings and specifications for the project. Such drawings and specifications should be prepared by qualified agency personnel according to the proposed project, the agency's program, the availability of personnel and Georgia law.
4. The APO coordinates the technical conditions, specifications and required drawings of the construction project with the agency personnel designated in 1.3 above. This will include preparation of the complete bid package including all prints, general and technical specifications, and the standard terms and conditions for construction projects. A project manual with Standard Terms and Conditions has been developed, and must be included with all construction projects.
5. The APO prepares a requisition and secures all necessary approvals and clearances.
6. The APO processes the requisition and ensures that it includes the following:
 - a. The project description and location. These must read as it appears in the specifications and plans since this is the description that will appear in the contract and on all required bonding documents.
 - b. The name(s) and address(es) of person(s) who will be responsible for distribution of plans and specifications to contractors requesting copies. The name(s) will appear in the RFQ and in the legal advertisement.
 - c. The amount of deposit required for obtaining a copy of plans and specifications.
 - d. Name(s) and address(es) of Agency personnel to receive correspondence (for example, copy of RFQ, bonds for approval and completed contracts packages) sent or forwarded from the SPD.
 - e. Name and title of the person in the agency who will be responsible for signing the contract.
7. The APO submits the requisition with one copy of the plans and Project Manual to the appropriate SPD. For projects over \$100,000.00, upon receipt of the requisition, the APO or the SPD will:

- a. Review the submitted bid package for general adequacy for the intended purpose.
 - b. Coordinate changes required, if any, with specified Agency personnel to ensure that competitive bids can be obtained.
 - c. Upon determination that bid package is suitable for intended purpose prepares a Request for Quote with required information for suitable vendors/contractors.
 - d. Establish time and date for opening of bids and notify Agency designee of same.
 - e. Prepare legal advertisement and post the bid opportunity on the Georgia Procurement Registry.
8. The designated party must distribute plans, specifications, project manuals, and all addenda to vendors, contracting firms and others. A deposit may be required from those who order such documents.
9. The designated party must maintain accurate records of firms, addresses (postal and e-mail), and telephone numbers of parties receiving copies of plans, specifications, project manuals, and all addenda and provide a copy of the completed list to the SPD prior to the bid closing date.
10. The APO provides a copy of all addenda issued to the SPD, prior to the “Bid Closing Date/Time.”
11. The bid officer opens and reads in public on the date and hour stipulated in the RFQ. The APO and design professionals are invited to attend bid openings.
12. For bids \$100,000.00 and over the SPD tabulates bids and forwards recommendations for award to the APO.
13. Evaluation and recommendation:
 - a. The Agency accepts the bid. If alternates are a part of the bid, the notice of acceptance must show the alternates to be exercised and the amount of each alternate along with the total amount of the contract.
 - b. If the Agency wishes to reject all bids, list the reason(s) for rejection and whether re-bidding is desired.
 - c. For projects \$100,000.00 and over, the APO will transmit to the SPD notification of this decision.
14. Upon preparation of the Notice of Award by the SPD, the APO will prepare proper contract documents and send to accepted bidder with complete instructions for the preparation and submission of all required contract documents.
15. Upon receipt of completed documents from the bidder, the APO will check for completeness, correctness and compliance with all requirements of the bidding documents (including the submission of Performance and Payment Bond) and Georgia Law.

16. The APO must have all copies of the contract signed by the appropriate person and forward one copy to the accepted contractor. For projects \$100,000.00 and over, the APO must forward one copy (along with a copy of the bonds) to the SPD and one copy of contract and purchase order to the accepted contractor.
17. The agency is responsible for administering and monitoring the project through the entire construction phase.
18. For projects awarded by the SPD, the APO must submit for approval copies of all change orders, prior to issuance to the SPD. The SPD will promptly approve all properly drawn and validated change orders that are within the statutory limitations.
19. The SPD will assist the agency, upon request, in clearing up problems that may arise during the construction phase. (See Contract, Performance, and Administration.)
20. The APO will provide written notice to the SPD upon contract completion and final acceptance of the project. The SPD will, upon receipt of notice of completion and acceptance, close the active file.

Section 2: Bonds and Insurance

2.1 Bid Security

1. If bid bonds are required, all bidders must submit a bid bond with the bid. Bid security shall be required for all competitive sealed bidding for construction contracts when the project is estimated by the APO to be \$100,000.00 or more. The bid security shall be a bond provided by a surety company authorized to do business in the State of Georgia. The State may waive the requirement of such bonds on construction contracts under \$100,000.00.
2. The amount of security shall be an amount specified in the solicitation.
3. When the RFQ requires bid security, noncompliant bids will be rejected.
4. After bids are opened, bonds shall be irrevocable for the period specified in the Request for Quote. If a bidder is permitted to withdraw the bid before award, or is excluded from competition before award, no action shall be taken against the bidder or the bid bond.

2.2 Contract Performance and Payment Bonds

When a construction contract is awarded and bonds are required, the following bonds shall be delivered to the State and shall become binding on the parties upon the execution of the contract:

1. A Performance Bond satisfactory to the State, executed by a surety company authorized to do business in the State of Georgia or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent (100%) of the contract price.

2. A Payment Bond satisfactory to the State, executed by a surety company authorized to do business in the State of Georgia or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the contract price.

2.3 Insurance and Indemnification

1. The contractor is also responsible for indemnifying the owner for all the contractor's agents, employees, or subcontractors.
2. The contractor shall not commence work until proof of insurance has been provided at the limits specified in the contract.
3. The contract shall identify and hold harmless the owner from and against any claims of liability to a third party for any loss due to injury or damage arising out of or resulting from the performance.

Section 3: Change Orders

Change orders are defined as any administrative change, scope of work change, specifications change, quantity and/or dollar value change.

The following procedures should be followed:

1. The APO shall complete a Change Order Form and attach all appropriate documentation supporting the request.
2. If the Purchase Order was issued from a solicitation conducted by the SPD, the completed Change Order Form and all appropriate documentation must be forwarded to the SPD for approval. After approval, the SPD will forward written approval to proceed, along with the change order, to the APO.
3. The APO must sign the Change Order. The change is issued to the contractor and the APO sends a copy to the SPD.
4. The APO will maintain a copy of the executed change order form, along with supporting documentation, in the bid file.

If the purchase order was issued by result of a solicitation conducted by the SPD, the APO must forward a copy of the executed change order form, along with supporting documentation, to the SPD.

Chapter 6: Contract Administration

Section 1: Agency Responsibilities

The goal of contract administration is to ensure that the contract is performed by the contractor and the responsibilities of both parties are properly discharged. It is the responsibility of the agency staff to oversee, monitor, and provide technical guidance to contractors performing under a contract.

The APO/designee is responsible for managing the contract after contract award. All direction to a contractor must be within the scope of the contract. Agency personnel must not impose additional requirements upon the contractor or make changes that are out of scope of the contract. In addition to the guidelines contained in the GPM, the APO should refer to the Contract Administration Guide for additional guidance.

Section 2: Functions of the Contract Administrator

1. The Contract Administrator has key responsibilities related to the contract. The first and foremost responsibility is to provide both technical oversight and direction. It is also the role of the Contract Administrator to review all work that has been or is being performed by the contractor, confirm that the work being performed is in accordance with the specifications and provisions of the contract, and address any performance deficiencies. The Contract Administrator is responsible for monitoring the progress of the contract and may perform inspections.
2. In addition, whenever the contract so prescribes, the Contract Administrator is responsible for acceptance of the work product or service provided. If changes need to be made to the contract in the form of modifications, terminations or claims disposition, the Contract Administrator manages this process. The Contract Administrator should document all actions taken regarding the contract and then maintain the original documentation concerning such actions in the official contract file. The Contract Administrator is responsible for reviewing and approving invoices submitted by the contractor, and for monitoring their payment for timeliness and accuracy.
3. It is the role of the Contract Administrator to renew the contract at the predetermined interval (usually on an annual basis) until the contract expires or is terminated. At the end of the process, it is the responsibility of the Contract Administrator to close out the contract file.

Section 3: Contract Management

3.1 Kickoff Meeting

1. A Kickoff meeting (also known as a post-award meeting) is a conference of the principals responsible for administering the contract held immediately upon award of a contract. It is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of the parties. It is an excellent tool to clarify and resolve any potential misunderstandings. Although both the contractor and agency personnel should be fully aware of the requirements of the contract at the time of award, the Kickoff meeting ensures that those involved directly in the contract administration process understand all requirements of contract performance. The meeting should be held within five (5) working days after contract award but no later than 12 days after contract award. The issuing officer should establish the time and place of the meeting, prepare an agenda, and notify all appropriate personnel.
2. Agency personnel should conduct a preliminary conference to properly plan for the kickoff meeting. The kickoff meeting should cover the following areas:
 - a. Scope of the contract, for example, specifically, what the Agency is buying.
 - b. Contract terms and conditions, particularly any special contract provisions.
 - c. Technical and reporting requirements of the contract. Reporting requirements are a means to keep the Agency informed regarding contract status and verify that the contractor's progress coincides with contract requirements.
 - d. Applicable contract administration procedures, including contract monitoring and progress measurement.
 - e. The rights and obligations of both parties and the contractor performance evaluation procedures.
 - f. Potential contract problem areas and their possible solutions.
 - g. Invoicing requirements and payment procedures. This is important if payment will be made according to milestones achieved by the contractor.
 - h. Liquidated damages and Performance Bonds must be discussed with the contractor and conditions for enforcement explained.
 - i. Agency personnel must explain the limits of their authority, and obtain the same information regarding contractor personnel.
3. After the Kickoff meeting, the Contract Specialist must prepare a memorandum for the file detailing the items covered. It must include areas requiring resolution, a list of participants, and, in particular, those individuals assigned responsibilities for further action and the due dates for those actions. Copies of the memorandum should be distributed to all participants.

3.2 Contract Administration Plan

The objective of a Contract Administration Plan (CAP) is to ensure that all Agency personnel have a common understanding of both the contractor's and customer's respective obligations. It is a cursory view of planned and completed activities, and can be utilized throughout the term of the contract as a status report. Among the items that to be included in the CAP are:

1. Statement of Work, Identification of all deliverables, milestones and due dates.
2. List of all contract modifications/amendments issued.
3. Summary of all invoices submitted and paid.
4. List of all option/renewal dates and option/renewal notification dates.
5. Contract Milestones are for service type contracts and also some production contracts, the contract may require the contractor to achieve certain milestones or events at stated intervals. The contract may or may not provide for payment to the contractor upon the timely achievement of the milestones. Contractor achievement of milestones may be inspected for the purposes of invoice approval or performance monitoring.
6. Performance monitoring is to ensure that the contractor is performing his duties in accordance with the contract and to determine whether any problems are developing that need to be addressed.
7. Submit periodic progress reports. Comparing these reports with the contract schedule shows whether or not the contractor is making progress in accordance with the terms of the contract.
8. List of the resources which the contractor applies to the work required. Such resources should be utilized in accordance with the proposed levels in the contract.
9. The costs incurred by the contractor must be in accordance with the contract rate schedule. Invoices must be reviewed to ensure that the contractor's billing coincides with its progress. This requires that the contractor's progress be measurable. (Costs incurred or invoices submitted, are insufficient indicators of the contractor's progress.) If the end user believes that the requested payment exceeds the contractor's progress, an explanation must be requested from the contractor prior to approval of the invoice. Payment should be withheld pending Agency satisfaction with the contractor's progress.
10. The Contract Specialist must work with the contractor to assure the timeliness and quality of deliverables. Any delay in delivery or poor quality of products or services is an indication that the contractor may be experiencing problems. Prompt inquiry may avoid further delays or quality problems. If a contractor is late in the delivery of goods or meeting a milestone, the Contract Administrator must immediately contact the contractor to ascertain the circumstances regarding the delay. However, it is the contractor's responsibility to identify schedule or performance issues and correct deficiencies in order to get back on track.

11. Deliverables must be inspected as soon as they are received to ensure that quality deficiencies are not repeated in the next shipment. (See Delivery of Goods/Performance of Services.)
12. More complex contracts may require in-process reviews and visits. Site visits to the contractor's facility by the Contract Administration and Program Manager can be utilized to verify actual performance against scheduled or reported performance. They can also assure that the contractor is dedicating sufficient resources and appropriate personnel to the contract. Site visits also reinforce the importance of the contract to the contractor, as well as provide the opportunity to enhance communication with the contractor and follow up on any previously noted discrepancies. In-Process Reviews and audits are detailed evaluations of the contractor's performance, and are generally restricted to the most complex and critical contracts.

3.3 Monitoring by Outside Vendors

In some instances the obligation of monitoring a contractor's progress is assigned to another contractor, for example, on a construction contract, the task of ensuring progress in accordance with the contract may be handled by the architectural firm that provided the plans for construction. For highly technical work, consultant subject matter experts may perform monitoring services independently or by Project Manager.

3.4 Delivery of Goods and/or Performance of Services

1. Inspection and Acceptance

The products delivered by the contractor must be inspected by the Project Manager upon receipt, and either accepted or rejected. For service contracts, inspection and acceptance may be upon the completion of stated tasks or timely achievement of milestones or events. The Project Manager must immediately notify the Contract Specialist of the inspection results. Acceptance constitutes Agency acknowledgment that the supplies or services conform to the quality and quantity requirements set forth in the contract.

2. Rejection of Goods or Services

If performance, goods or services do not meet the contract requirements, the Program Manager must identify the deficiencies and advise the contractor and the Contract Specialist, in writing, so that remedial action can be taken immediately. It is critical that all rejections be fully documented since these will be used to support any disapproval of invoices. Upon receipt of a rejection notice, the Contract Specialist must immediately contact the contractor to ascertain what corrective actions the contractor is taking to correct the deficiency and assure that future deliveries/performance meet the contract requirements. Contractors must be given prompt notice of rejection, including the reasons for rejection. If prompt notice is not given, acceptance may be implied as a matter of law. Contractors must be given an opportunity to correct or replace nonconforming goods or services when that can be accomplished within the delivery schedule. Correction

or replacement must be without additional cost to the Agency. Additionally, contractor performance must be well documented to provide a historical record that can be used in making future contract evaluation/award decisions.

3. Acceptance of Nonconforming Goods or Services

Nonconforming goods or services may, however, be accepted by the Program Manager, when it is in the best interest of the Agency. The Program Manager should determine whether or not such nonconformance is a one-time exception or may apply throughout the term of the contract. It is recommended that Agency personnel should discourage the repeated tender of nonconforming goods or services. When considering whether or not to accept nonconforming goods or services, the Program Manager, with assistance from the Contract Specialist, must determine if the nonconformance adversely affects the satisfaction of a basic contract objective. When accepting nonconforming goods or services, the Program Manager must notify the Contract Specialist, and they should decide whether or not the nonconformance merits an applicable adjustment in the contract fees. The Contract Specialist will issue an appropriate modification to the contract reflecting the nonconformance, whether it is a one-time occurrence or for the entire contract period, and any applicable monetary reduction to the contract.

4. Return Items

When the items are shipped incorrectly or damaged in shipping, the APO should obtain a return authorization number, if required by the vendor. Many suppliers require that a return authorization number is obtained prior to their acceptance of a return item. Neglecting to obtain this number when it is required may result in the package being refused and/or no credit being issued to the account.

In some cases there could be a restocking fee (usually a percentage of the purchase price). If the supplier is completely responsible for the error or the problem, the Agency should not have to pay freight, restocking, or any other fee. If the supplier is not fully responsible for the error, then the agency may be required to pay the fee.

Once the supplier has been notified that an item needs to be returned and a return authorization number has been issued, a change order can then be processed and faxed or mailed to the supplier.

5. Processing Invoices

Invoices must be reviewed by both the Program Manager and Contract Specialist prior to payment.

3.5 Project Manager Responsibilities

The Project Manager must review each invoice to ensure that the contractor is only billing for goods or services received by the Agency, and that the goods or services have been accepted.

3.6 Contract Specialist Responsibilities

The Contract Specialist is responsible for reviewing each invoice to ensure that it is correct, that the invoice complies with the terms and conditions of the contract, and that the total payments do not exceed the contract limits.

a. Administrative Fee Report

An administrative fee as defined by DOAS for supply contracts may be added to the apparent winning cost proposal prior to contract award. The Contractor will pay the administrative fees to DOAS no later than 15 days after the end of each calendar quarter. The Contractor will note “administrative fee” and the contract number on a check and remit it to:

Department of Administrative Services
State Purchasing Division
Assistant Commissioner
Sloppy Floyd Building
200 Piedmont Avenue, S.E.
Suite 1308, West Tower
Atlanta, Georgia 30334-9010

At the end of each calendar quarter, the Contractor will submit to the Issuing Officer an Administrative Fee Report. By submission of these reports and corresponding Contractor payments, the Contractor is certifying their correctness. All reports and fee payments are subject to audit by the State. Contractors are also responsible for reporting sales and paying administrative fees resulting from sales made by authorized resellers. DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

Failure to comply with these requirements constitutes grounds for declaring the Contractor in default. DOAS has the right to recover re-procurement costs from the Contractor in addition to all outstanding administrative fees. Contractors delinquent in paying administrative fees may be excluded from bidding on future Statewide and Agency Contracts.

3.7 Withholding Payments and Liquidated Damages

The Contract Specialist has the responsibility to protect the interests of the State, and under the appropriate circumstances, it may be necessary to withhold payments from contractors or invoke a liquidated damages clause if included in the contract. The liquidated damages clause may not be invoked as a penalty, punishment or for punitive purposes. The payment must reflect estimated monetary damages. Among the circumstances where it may be necessary to withhold payment are:

1. A material breach of the contract by the contractor.
2. Errors in the invoice.

3. Unsupported or undocumented costs.
4. To remedy previous overpayments on the same contract.
5. Contractor's performance is nonconforming or unacceptable.
6. Invoices for travel that are not in compliance with Georgia's Travel Regulations.

3.8 Change Management

Throughout the term of the contract, it may be necessary to make changes to the contract. These changes can be minor administrative changes, such as a change of address, or they can be substantial changes that affect the price and delivery. The contractor must continue performance of the contract as changed.

1. Administrative Changes

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties. These changes are executed via a unilateral amendment. Examples of administrative changes include:

- a. Changes in billing instructions or address
- b. Corrections of typographical errors not affecting the substance of the contract
- c. Changes as permitted by the specific contract clauses
- d. Changes in Agency personnel assigned to the contract

2. Administrative Change Procedures

The need for an administrative change may be identified by either the Project Manager or the Contract Specialist. If identified by the Project Manager, he/she shall submit a request for a change order to the Contract Specialist. Upon receipt of a request for an administrative change, the Contract Specialist should verify that the rights of the parties are not affected by the change. The Contract Specialist executes the change order amendment and distributes copies to the Project Manager and the contractor. Other departments that are affected by the change should also receive copies of the amendment, for example, Accounts Payable should receive a copy if there is a change to the contractor's remittance address.

3. Substantive Changes

These are contractual changes that affect the rights of the parties. Such changes require bilateral amendments, which must be signed by both parties. Examples of substantive changes include:

- a. Change in the price of the contract
- b. Change in delivery schedule
- c. Change in the quantity
- d. Change of nature of deliverables, for example, the specification
- e. Change of key personnel

- f. Change of any terms and conditions
- g. An extension of the contract not previously contemplated by the contract

4. Substantive Change Procedures

A substantive change may be initiated by the Program Manager, Contract Specialist or the contractor. Upon receipt of a substantive change order request, the Contract Specialist must determine whether the proposed change is within the scope of the contract. This may require input from the Program Manager, and sometimes from a Legal Services Officer.

5. Constructive Changes

If a contractor perceives that work beyond the scope of the contract was ordered by the Agency, the contractor may claim that the contract was “constructively” changed, and the contractor may be entitled to additional compensation for the changes. Generally, a constructive change will require a bilateral amendment. Constructive changes may occur when Agency personnel:

- a. Provide suggestions to a contractor
- b. Provide definitions to general contract terms
- c. Accelerate the delivery schedule
- d. Direct the work to be performed differently
- e. Change the sequencing of the work
- f. Delays accepting or rejecting deliverables
- g. Delays reviewing invoices and approving payment
- h. Interferes with or hinders performance
- i. Add to the scope of work

6. Dispute Resolution

The goal of the resolution process is to resolve all problems before they escalate to the next level. To avoid escalation and assure the agency has not exacerbated potential problems, it is imperative that Agency personnel respond promptly to all contractor inquiries. Initial steps to be taken are:

- a. Identify the problem – Frequently, what may appear to be a problem can be resolved by providing the contractor with information or clarification.
- b. Research facts – The Contract Specialist should obtain all the information regarding the potential problem from all relevant sources, including the project manager and the contractor.
- c. Evaluation – The Contract Specialist should review all the facts in conjunction with the requirements and terms and conditions of the contract. The Contract Specialist should then confer with the Program Manager (and management and budget, if necessary) to determine the appropriate course of action.

- d. Proper dispute resolution is a core skill of successful Program Management. It is essential to identify problems early in the performance period, use effective communication, and formalize the process in writing via cure notice procedure or less formal written procedure.

3.9 Termination

When a contract is terminated, the parties are relieved from all further unperformed obligations in accordance with the agreed terms and conditions. A contract may be terminated for default.

1. Termination for Convenience

A termination for convenience (no-fault termination) allows the Agency to terminate any contract, in whole or in part, at any time at its sole discretion, if it is determined that such termination is in the best interest of the State.

- a. The Agency shall provide the contractor with a written notice specifying the extent (full or partial) of termination and the effective date. The Agency should attempt to provide the contractor with as much notice as possible.
- b. The notice of termination should instruct the contractor to cease all work as of the effective date and to notify all subcontractors of the termination.
- c. The termination notice must be issued as a Notice of Award/Amendment. Following is a sample wording of the termination notice:

“Pursuant to clause No. ___, Termination, this contract is hereby terminated immediately. You are directed to immediately stop all work, terminate subcontracts, and place no further orders.

In accordance with this Notice of Termination, you shall:

- 1) Keep adequate records of your compliance with this notice, including the extent of completion on the date of this Termination;
 - 2) Immediately notify all subcontractors and suppliers, if any, of this Notice of Termination;
 - 3) Notify the (Agency) Contract Specialist, (Name), of any and all matters that may be adversely affected by this Termination; and
 - 4) Take any other action required by the (Agency) Contract Specialist to expedite this Termination.”
- d. The contractor will generally be paid for allowable costs incurred up to the termination. The agency will not be liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of the termination.
 - 1) Upon receipt of any invoice from the contractor for work performed prior to the Notice of Termination, the Program Manager and Contract Specialist must thoroughly review the invoice to assure that no excessive costs are included.

- 2) Once the Program Manager and Contract Specialist agree on an amount due the contractor, the Contract Specialist must inform the contractor. If the contractor disagrees with the Agency's determination, the Contract Specialist should attempt to negotiate a settlement. If no agreement can be reached, the Contract Specialist must make a determination of a fair and reasonable price. The Contract Specialist should then issue another Notice of Award/Amendment to reflect the new contract price.

2. Termination for Default

A contract may be terminated for default when the Agency concludes that the contractor fails to perform, make progress, or in any way breached the contract. It should be noted that the Agency is not required to terminate a contract even though the circumstances permit such action. The agency may determine that it is in its best interest to pursue other alternatives, for example, extending the delivery/completion date and allowing the contractor to continue working, or working with the contractor's surety to complete the outstanding work. It must be remembered that termination for default should be used as a last resort and not as punishment. The purpose of a termination for default is essentially to protect the interests of the Agency while obtaining the necessary goods or services.

Factors to consider prior to the termination for default decision:

- a. Has the Agency done everything within its power to assist the contractor in curing any default?
- b. The specific contractual failure(s) and the reasons/excuses for the failures.
- c. The urgency of the need for the contracted supplies or services. The Agency may need to weigh the respective benefits/disadvantages of allowing a delinquent contractor to continue performance and re-soliciting a new contractor.
- d. The availability of the supplies or services from other sources, and the time required to obtain them (compared with the additional time the current contractor needed to complete the contract).
- e. Availability of funds for costs to repurchase in the event such costs cannot be recovered from the delinquent contractor. Under a termination for default, the Agency is within its rights to demand re-procurement costs from the defaulting contractor. Nevertheless, the contractor may not be financially capable of financing the repurchase, or such demand may result in protracted legal action.

3. Excusable Causes

A contract may not be terminated for default when the failure to perform is due to excusable causes. In order to qualify as an excusable cause, the cause must be beyond the control, and without the fault or negligence, of the contractor. Such causes include, but are not limited to: (1) acts of God or of the public enemy, (2) fires, (3) floods, (4) epidemics, (5) strikes, (6) freight embargoes, and (7)

unusually severe weather. If a contractor's failure to perform is due to the default of a subcontractor, in order to qualify as an excusable cause, the default must arise out of causes beyond the control and without the fault or negligence of both the contractor and subcontractor. Even if this requirement is met, the cause will not be excusable if the supplies or services to be provided by the subcontractor could have been obtained from other sources in time to meet the contract delivery schedule.

4. Procedures

Prior to terminating a contract for default a delinquency notice must be sent to the contractor. These notices are generally sent with proof of delivery requested.

a. Cure Notice

When it has been determined that a termination for default is warranted, the Contract Specialist must notify the contractor in writing and allow a reasonable period, usually ten (10) days, to correct or cure the deficiency or violation. This notice is commonly known as a "Cure Notice." The format for a Cure Notice may be as follows:

"You are notified that the [Agency] considers [specify failure(s)] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within ten (10) days after receipt of this notice, the [Agency] may terminate for default under the terms and conditions of the Termination clause of this contract."

b. Show Cause Notice

If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of ten (10) days or more, a Show Cause Notice can be used. It may also be used as a final warning to the contractor if the contractor has failed to adequately respond to a Cure Notice.

The format for a Show Cause may be as follows:

"Since you have failed to perform Contract No. _____ within the time required by its terms [or cure the conditions endangering performance under Contract No. _____ as described to you in the (Agency's) letter of _____], the [Agency] is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to [name and address of Contract Specialist] within ten (10) days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist.

Any assistance given to you on this contract or any acceptance by the [Agency] of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the [Agency] to condone

any delinquency or to waive any rights the [Agency] has under the contract.”

c. Notice of Termination

If the contractor fails to cure the situation or provide a satisfactory explanation as requested in the Show Cause Notice, the contract may be terminated. The Notice of Termination should contain the following:

- 1) The contract number and date of contract
- 2) The effective date of the termination
- 3) Reference to the clause under which the contract is being terminated
- 4) A concise, accurate statement of the facts justifying the termination
- 5) A statement that the supplies or services being terminated may be re-procured and that the contractor will be held liable for any excess repurchasing costs.

Section 4: Contract Closeout

The purpose of the closeout process is to verify that both parties to the contract have fulfilled their contractual obligations and that there are no responsibilities remaining.

A contract is completed when all goods or services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all agency-furnished equipment and material has been returned; and final payment has been made to the contractor.

4.1 The Closeout Process

To begin the closeout process, the Contract Specialist should first determine that the contractor has satisfactorily performed all required contractual obligations. A contract is ready for closeout when:

1. All deliverables including reports have been delivered and accepted by the Agency.
2. Final payment has been made.
3. All Agency property (if applicable) has been returned.
4. Approval from the Program Manager (if applicable) has been received.
5. All issues have been resolved.

4.2 Responsibilities

The Contract Specialist is primarily responsible for contract closeout and must:

1. Determine whether all payments to the contractor have been made.
2. Determine whether all administrative actions have been completed.

3. Ensure that all issues have been resolved.
4. Ensure that the official contract file contains all necessary documentation. The Program Manager must
 - a. Determine whether all deliverables, including reports, have been delivered and accepted.
 - b. Determine whether all Agency property, if any, has been returned.
 - c. File a contractor performance evaluation with the Contract Specialist.
 - d. Provide the Contract Specialist with the appropriate material from the Program Manager's file for inclusion in the official contract file.

Section 5: Vendor/Contractor Performance

5.1 Contractor Performance

The APO shall prepare a contract assessment form on every contract at the end of the contract. This form must be completed and submitted to the SPD prior to the extension or renewal of the contract. The APO should use information contained in contractor's performance evaluation form to prepare the contract assessment.

5.2 Complaints against Vendor/Contractors

A contract is awarded with the expectation that both the contractor and the State of Georgia have entered into the agreement in good faith, and that both parties will perform their respective duties and obligations in accordance with the contract specifications, terms and conditions and at the quoted price. Occasionally, situations arise when the contractor does not perform and the Agency may suffer damages as a result. Typical non-performance issues include, but are not limited to:

1. Missing a scheduled delivery date and time
2. Providing items that are not a part of the contract
3. Providing inferior merchandise
4. Unauthorized substitutions
5. Alteration of the contract pricing
6. Damaged shipments
7. Unauthorized use of subcontractors unauthorized assignment of the contract to another contractor
8. Inadequate staffing levels
9. Unqualified workers
10. Late or failed delivery
11. Late worker arrivals or no-shows

If the APO has a complaint against a vendor or a contractor, the APO should make an effort to resolve the problem with the contractor informally.

The state has several remedies available to resolve non-performance issues with the contractor. The agency should refer to the Contract Terms and Conditions to view these remedies. The SPD, however, may not usually exercise these remedies until/unless the contractor has been provided with an opportunity to cure the deficiency. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue. If the Agency's efforts fail to resolve the issues, the Agency should then notify DOAS. The mechanism to notify DOAS is the Complaint to Vendor (CTV) form.

5.3 Failure to Satisfactorily Respond to the Complaint

In the event that a contractor fails to respond to the complaint, the APO shall take this factor into consideration in determining the contractor's eligibility for future contracts. The seriousness of the complaint is determined by the State Purchasing Division and recorded in the contractor's history file. Repeated complaints could result in suspension and/or debarment.

In the event of default by the contractor for failure to deliver, failure to meet specifications, or for any other reason, the State of Georgia may, in addition to any other remedies which it may have by law, in equity, or which may be provided for in its contract, procure the subject items or services from other sources and hold the contractor responsible for any additional cost which is incurred as a result. Default on contracts may result in suspension and/or debarment.

5.4 The Complaint to Vendor (CTV)

The CTV shall be used by agencies to notify the SPD of non-performance by a contractor under a state term contract. The SPD utilizes the Complaint to Vendor form to provide a standard means for all State agencies to report contractor discrepancies or deficiencies on the part of the vendor or the products furnished which do not meet the standards and specifications of the purchase order. The form further provides a means by which the SPD may obtain factual reports relative to the performance of a vendor to furnish supplies, equipment, material and/or services to the State. A copy of each report issued to a vendor shall be mailed to the SPD. The CTV may be used by the State in evaluation of the contractor on future bids. If the SPD determines that past performance of the contractor is unacceptable, the SPD may disqualify the contractor and deny future awards. Therefore, it is very important that the Agency provide complete and accurate details.

Upon receipt at the SPD, the CTV will be logged in by the SPD Vendor Certification Officer (VCO). The APO shall notify the SPD if the complaint has been resolved.

Section 6: Contract Clauses

6.1 Contract Clauses

1. The SPDAC may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance, or other contract provisions.
2. The SPDAC may modify clauses for inclusion in any particular state contract, provided that any notice of any material variations is stated in the solicitation.
3. All contract clauses shall be consistent with the provisions of this Article and the regulations issued pursuant to this part.
4. See the Appendix for sample contract clauses that may be added to the Standard Agency Agreement. The APO should contact the SPD if developing a contract for an RFP.

6.2 Standard Terms and Conditions

State agencies that have been delegated procurement authority by the SPDAC shall use in contracts for commodities and services standard terms and conditions clauses that have been approved by the SPDAC.

Chapter 7: Cost Principles

Section 1: ---- Reserved ----

Chapter 8: Fleet Management

Section 1: ---- Reserved ----

Chapter 9: Legal and Contractual Remedies

Section 1: Formal Protest and Informal Complaint Process

1.1 Filing for Formal Protests for Solicitations \$100,000.00 or more

1. Protests concerning a Notice of Intent to Award must be filed no later than ten (10) calendar days following the issuance of a Notice of Intent to Award.
2. Protests pertaining to events or facts arising during the solicitation process, including but not limited to specifications, must be filed no later than two (2) business days prior to the public bid closing or proposal due date.
3. Effective January 20, 2009, any challenge to a sole source determination must be filed prior to the identified closing date of the sole source notice publicly posted to the Georgia Procurement Registry as further described in Chapter 3 of this manual (Section 6.9, Item 3.E.).
4. Vendors who do not submit a timely bid/proposal may not protest the contract award.
5. A protest is considered to be properly filed when it is in writing and is signed by a company officer authorized to sign contracts on behalf of the bidder/offeror and is received by the State Purchasing Division Assistant Commissioner. Protests sent by mail, fax or email will be accepted.

Mail:

**Attention: Assistant Commissioner
200 Piedmont Ave., SE, Suite 1308 West Tower
Atlanta, GA 30334-9010**

Fax:

404-657-8444

Email:

protests@doas.ga.gov

6. If a bidder/offeror fails to file a protest by the time required, the State may, at its discretion, deem the failure to file as a waiver with prejudice of any grounds the bidder/offeror may have for a protest.
7. The State may, at its discretion, deem issues not raised in the initial protest as waived with prejudice by the Protestor.

1.2 Form of Protest

At a minimum, the protest must include the following:

1. The name and address of the Protestor
2. Appropriate identification of the solicitation, and, if a contract has been awarded, its number
3. A statement of reasons for the protest
4. Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated

1.3 Stay of Procurement During Formal Protests for Solicitations \$100,000.00 or more

1. When a protest pertaining to events or facts arising during the solicitation process, such as protests concerning specifications, has been timely filed at least two (2) business days prior to the public bid closing or proposal deadline date, the solicitation shall not close until a final decision resolving the protest has been issued, unless the State Purchasing Division Assistant Commissioner makes a written determination, after consulting with the user agency, that the closing of the solicitation without delay is necessary to protect the interests of the State.
2. When a protest has been filed (1) in a timely fashion within ten (10) calendar days following the issuance of a Notice of Intent to Award or (2) prior to the closing date of the sole source notice, the SPD shall consult with the user agency to determine if performance of the contract without delay is necessary to protect the interests of the State. If it is determined that it is necessary to proceed with the issuance of the contract and contract performance without delay, the bidder/offeror with this contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract; however, such bidder/offeror shall not be entitled to reimbursement for any capital outlay costs, or other up front expenditures incurred in performing the contract. The provisions of the paragraph are not applicable to a protest pertaining to events or facts arising during the solicitation process.

1.4 Decision by State Purchasing Division Assistant Commissioner

The State Purchasing Division Assistant Commissioner shall make a decision on the protest as expeditiously as possible after receiving all relevant requested information. If the protest is sustained, the available remedies include:

1. If a protest is sustained prior to the closing of the solicitation, available remedies may include, but are not limited to, the following: modification of the solicitation document, including but not limited to specifications and terms and conditions; and extension of the opening date if appropriate.

2. If a formal protest is sustained after the Notice of Intent to Award or the sole source notice, available remedies may include, but are not limited to, the following: suspension or cancellation of the Notice of Intent to Award, sole source notice or any contract award, re-evaluation and re-award, or re-solicitation with appropriate changes to the new solicitation document.

1.5 Costs

In no event shall a Protestor be entitled to recover any costs incurred in connection with the solicitation, including bid/proposal preparation costs or attorneys' fees.

1.6 Request for Formal Review and Time for Filing

If a Protestor, another vendor or user agency (each individually referred to as "Challenger") disagrees with the decision of the State Purchasing Division Assistant Commissioner, the Challenger must request a formal review of the State Purchasing Division Assistant Commissioner's decision to the Commissioner of the Department of Administrative Services within three (3) business days of the date of the State Purchasing Division Assistant Commissioner's decision. In the preceding sentence, "another vendor" shall mean any vendor adversely impacted by the protest decision who either (1) is interested in submitting a bid/offer to a solicitation which is currently open or (2) submitted a timely bid/proposal to a solicitation which has closed.

The request for formal review shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors in the State Purchasing Division Assistant Commissioner's decision. The Commissioner of the Department of Administrative Services may, in his or her sole discretion, allow the Challenger to make an oral presentation, and may solicit whatever other information he or she deems appropriate. However, issues not raised in the initial protest by the Protestor or issues not raised in the initial request for formal review by the Challenger may at the discretion of the Commissioner of the Department of Administrative Services be deemed waived with prejudice by the Protestor/Challenger. In the event the Commissioner of the Department of Administrative Services elects to grant the request for an oral presentation and the Commissioner determines the oral presentation must be transcribed, the requesting party shall be required to pay the costs of the transcriptionist services, including one copy of the transcribed materials for the Commissioner's records.

1.7 Final Decision

The decision of the Commissioner of the Department of Administrative Services is final.

1.8 Exempt Entities/Categories Protest Process

There are certain entities and specific categories of purchasing which fall under the exempt category as stated in O.C.G.A. §50-5-58 and Chapter 2, Section 3 of this manual, which are exempt from State Purchasing requirements. Vendors objecting to

solicitations by these entities or solicitation concerning the specific exempt categories must address their complaints to the entity or state agency responsible for the solicitation. All other protests must be filed according to the rules within this section of the manual.

1.9 Informal Complaint Process for Solicitations over \$5,000.00 and less than \$100,000.00

1. Any aggrieved person or entity may challenge events or facts arising during the solicitation process, including but not limited to specifications, for all solicitations of \$5,000.00 or more but less than \$100,000.00 which are not otherwise exempt from State Purchasing requirements by filing a written informal complaint with the State Purchasing Division Assistant Commissioner no later than two (2) business days prior to the public bid closing or proposal due date. Please Note: Effective January 20, 2009, any challenge to a sole source determination must be filed prior to the identified closing date of the sole source notice publicly posted to the Georgia Procurement Registry as further described in Chapter 3 of this manual.
2. For contract awards less than \$100,000.00, the Agency may either (1) announce the preliminary evaluation results and the Agency's expected contract award through the public posting of a Notice of Intent to Award or (2) proceed directly to contract award and publicly post a Notice of Award. Any aggrieved bidder/offeror that has submitted a timely response to a solicitation may challenge the results of the solicitation process for all solicitations of \$5,000.00 or more but less than \$100,000.00 which are not otherwise exempt from State Purchasing requirements by filing a written informal complaint with the State Purchasing Division Assistant Commissioner no later than ten (10) calendar days following the Agency's issuance of the Notice of Intent to Award or Notice of Award whichever comes first. Please Note: Any challenge to a sole source determination must be filed prior to the identified closing date of the sole source notice publicly posted to the Georgia Procurement Registry as further described in Chapter 3 of this manual.
3. Informal complaints must be submitted in writing, signed by a company officer and sent by mail, fax or email as follows:
 - Mail:
Attention: Assistant Commissioner
200 Piedmont Ave., SE, Suite 1308 West Tower
Atlanta, GA 30334-9010
 - Fax:
404-657-8444
 - Email:
protests@doas.ga.gov

An informal complaint has been "filed" when it has been received by the State Purchasing Division Assistant Commissioner. Failure to file an informal complaint

by the time required may at the discretion of the State be deemed a waiver with prejudice by the vendor or bidder/offeror of any grounds it may have for complaint.

4. The informal complaint must, at a minimum:
 - a. identify the name and address of the complainant,
 - b. identify the disputed solicitation and/or Notice of Intent to Award/Notice of Award,
 - c. provide a clear statement of reasons for the complaint, and
 - d. provide any supporting exhibits, evidence or documents to substantiate any claims.

If supporting evidence or documents to substantiate the challenge are not available within the filing time period for informal complaints, then the vendor must file a timely, written informal complaint identifying the expected availability date.

5. The informal complaint will be forwarded to the Agency that handled the solicitation and the Agency will review the informal complaint. The Agency shall make a decision on the informal complaint as expeditiously as possible after receiving all relevant requested information. Before issuing a written decision resolving the informal complaint, the Agency will notify the State Purchasing Division Assistant Commissioner of the intended resolution of the informal complaint. After issuing a written decision resolving the informal complaint, the Agency will send a copy of the written decision to the State Purchasing Division Assistant Commissioner. The decision of the Agency is final; provided, however, DOAS has the authority to review any solicitation or award at any time for any reason at its sole discretion.
6. The complainant shall be responsible for all the costs of the complainant's participation in the informal complaint process.

1.10 Partnership with Georgia State Finance and Investment Commission

DOAS has entered into an intergovernmental agreement with the Georgia State Finance and Investment Commission ("GSFIC") transferring to GSFIC the authority to administer procurements and contracts for certain construction projects due to GSFIC's expertise in construction matters. DOAS and GSFIC will jointly determine what construction projects GSFIC shall handle. In the event a vendor desires to file a protest as defined by Section 1.1 and the protest concerns a solicitation handled by GSFIC pursuant to the intergovernmental agreement between DOAS and GSFIC, the vendor shall file the protest in accordance with the instructions provided in GSFIC's solicitation. GSFIC shall make a decision on the protest as expeditiously as possible after receiving all relevant requested information. Before issuing a written decision resolving the protest, GSFIC will notify the State Purchasing Division Assistant Commissioner of the intended resolution of the protest. After issuing a written decision resolving the protest, GSFIC will send a copy of the written decision to the State Purchasing Division Assistant Commissioner.

Section 2: Suspension or Debarment

2.1 Causes for Debarment or Suspension

The SPDAC may debar a vendor/contractor for any of the causes listed below:

1. Violation of Contract provisions, as set forth below, of a character which is regarded to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state vendor;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposal;
4. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance in the contract or subcontract;
5. Any other cause so serious and compelling as to affect responsibility as a state vendor, including debarment by another government entity; and
6. Any violations of the provisions of O.C.G.A. Sections 45-10-20 through O.C.G.A. Sections 45-10-28 which govern Conflicts of Interest.

2.2 Responsibilities of the APO

The APO shall submit a written request along with supporting documentation to the State Purchasing Division Assistant Commissioner requesting debarment action against a vendor/contractor where the causes of debarment stated above are met. The SPDAC will review the documentation and the stated reasons for the requested debarment and issue a written determination to the APO on whether suspension or debarment is appropriate. The SPDAC may suspend the vendor/contractor pending a determination of the debarment. The SPDAC will not take suspension or debarment action against a vendor/contractor where the basis of the agency's request appears to be arbitrary or capricious, frivolous or without merit.

2.3 Suspension Procedures

1. Suspension procedures may be initiated after consultation with the SPD purchasing agent(s) or APO(s), the Office of Legal Services, and where

practicable, the vendor/contractor who is to be suspended, and upon written determination by the State Purchasing Division Assistant Commissioner that probable cause exists for debarment as hereinafter set forth, a vendor shall be suspended. A notice of suspension including a copy of such determination shall be sent to the suspended vendor/contractor. The notice shall state that:

- a. The suspension is for the period it takes to complete an investigation into possible debarment including any appeal of a debarment decision but not for a period in excess of one hundred-twenty (120) days.
 - b. Bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension.
2. If a hearing has not been held, the suspended person may request a hearing in accordance with the procedures for suspension and debarment of vendors set forth in the vendor's manual.

2.4 Effect of Decision to Suspend

1. A vendor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the officer who issued the notice of suspension, by the Commissioner of the Department of Administrative Services, or by a court of law, but otherwise shall only be ended when the suspension has been in effect for one hundred-twenty (120) days or a debarment decision has taken effect.
2. Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the vendor/contractor. This notice shall:
 - a. State that debarment is being considered;
 - b. Set forth the reasons for the action;
 - c. State that, if the vendor so requests, a hearing will be held, provided such request is received by the SPDAC within ten (10) days after the vendor receives notice of the proposed action;
 - d. State that the vendor may be represented by counsel.

2.5 Request for Hearing

A vendor that has been notified of a suspension/proposed debarment action may request in writing that a hearing be held. Such request must be received by the SPDAC within ten (10) days of receipt of notice of the proposed action. If no request is received within the ten (10) day period, a final determination may be made as set forth hereinafter.

2.6 Hearing Procedures

The APO may be called upon as a witness and be requested to provide information pertinent to the suspension or proposed debarment.

1. Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. The hearing officer may require evidence in addition to that offered by the parties.
2. The hearing may be recorded but need not be transcribed except at the request and expense of the vendor. A record of those present, identification of any written evidence, copies of all written statements, and a summary of the hearing shall be sufficient record.
3. Opening statements may be made unless a party waives this right.

2.7 Determination of Hearing Officer - Final Decision

The hearing officer shall prepare a written determination and shall send copies thereof to the Commissioner of the Department of Administrative Services and to the vendor. The vendor shall have ten (10) days in which to file comments upon the hearing officer's determination. The Commissioner of the Department of Administrative Services may thereafter, in his or her sole discretion, request oral argument. The Commissioner of the Department of Administrative Services shall issue a final decision. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the length of debarment (not to exceed five years), the reasons for such action, and to what extent affiliates are affected shall be set forth. In addition, the final determination shall inform the debarred person of his or her rights to judicial review.

A debarment decision shall take effect upon issuance and receipt by the vendor. After the debarment decision takes effect, the vendor shall remain debarred until the debarment period specified in the decision expires.

Section 3: Solicitation or Awards in Violation of the Law

Any official of an agency or institution who willfully purchases or causes to be purchased any materials, supplies or equipment contrary to the rules and regulations shall be personally liable for the cost thereof. If paid for from State funds, the amount may be recovered in the name of the State.

Section 4: Purchase of Beef

1. It shall be unlawful for the state; any branch, department, agency, board, or commission of the state; any county, municipality, board of education, or other political subdivision; or any officer, agent, or employee of any of the foregoing to purchase or authorize the purchase of any beef other than beef raised and produced within the United States when the purchase is to be made with governmental funds. The provision of this act shall not apply to canned meat which is not available from a source within the United States and which is not processed in the United States.

2. Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

Section 5: Taxes

The State is prohibited from paying or reimbursing a vendor for certain taxes, which may be lawfully imposed on the vendor or on the property being provided. The State will, however, pay any taxes, which may be lawfully imposed on the vendor or on the property being provided and for which the State is legally obligated. The State will also pay any taxes, which may be lawfully imposed on it.

5.1 State Taxes from which State Agencies are Exempt

1. Sales and Use Tax
2. Local Option Sales Tax
3. Marta Tax (Rapid Transit Tax)
4. Special Purpose Sales Tax
5. Hotel/Motel Excise Tax (with use of exemption form)

5.2 State Taxes from which State Agencies are not Exempt

1. Motor Fuel Tax (except aviation fuel is not taxed; aviation gasoline is not exempt)
2. 2nd Motor Fuel Tax (except aviation fuel is exempt; aviation gasoline is not exempt)
3. GUST (Georgia Underground Storage Tank Act)
4. State Scrap Tire Fee (new tires only)
5. Hotel/Motel Sales Tax (exempt when bill paid directly by state agency)

5.3 Federal Excise Taxes from which State Agencies are Exempt

1. Communications (Telephone and Telegraph)
2. Heavy Trucks, Trailers and Tractors
3. Tires
4. Gasoline (including Leaking Underground Storage Tanks [LUST] tax)
5. Gasohol
6. Diesel Motor Fuels
7. Firearms
8. Ammunition
9. Sport Fishing Equipment
10. Non-commercial Aviation Fuels

11. Gasoline
12. Fuels other than gasoline including jet fuel (Airport and airway trust fund tax)

5.4 Federal Excise Taxes from which State Agencies are not Exempt

1. Transportation of Persons by Air
2. Transportation of Property by Air
3. Gas Guzzler (except for Law Enforcement Agencies)
4. Certain Ozone Depleting Chemicals Tax
5. Taxes on Coal
6. Tax on Vaccines
7. Superfund Taxes on Petroleum Products

Section 6: Interest

An opinion issued by the Attorney General in 1979 indicated that it might not be "appropriate" for state agencies to pay interest charges associated with contracts without specific approval from the Legislature.

The SPD sought and obtained authorization to pay interest on installment purchase contracts in the 1979 Legislative Session. This authorization does not extend to interest payments on outstanding principal balances associated with contracts other than conditional sales contracts.

Chapter 10: Intergovernmental Relations

Section 1: ---- Reserved ----

Chapter 11: Assistance to Small and Minority Owned Businesses

Section 1: Minority Business Participation

It is the policy of the State of Georgia that small businesses and minority businesses have a fair and equal opportunity to participate in the State purchasing process, pursuant to the Governor's Executive Order issued on July 1, 1999.

The Executive Order states that "A[all] state agencies, authorities, commissions and institutions shall make an immediate concerted effort to increase the level of minority business participation in the state contracting process by increasing bid opportunities extended to the minority community and by providing more direct assistance to minority vendors on how the state contracting process works.

1. All bid documents shall include statements encouraging minority business participation and statements encouraging majority businesses to subcontract with minority businesses.
2. All bid documents shall include notification of the income tax credit that is available to any business that subcontracts with a minority-owned business.
3. All state agencies, authorities, commissions and institutions shall make special efforts to publicize and advertise bid opportunities to the minority business community including the use of minority-oriented media, and that notification be given to nonprofit organizations, publications and special interest groups whose primary membership includes or targets minority contractors.
4. SPD policy requires that the APO solicit a minimum number of minority firms by dollar amount. (See Article III, Section 7, Section A "Minimum Bid Policy".)
5. All state agencies, authorities, commissions and institutions shall appoint a designee to act as liaison between their organization and minority vendors to provide one-on-one assistance and ensure that bid information is widely and appropriately disseminated; the name, address and telephone number of this individual is to be forwarded immediately to the Governor's Office and posted on all bid documents.
6. The Agency's Minority Coordinator is responsible for the timely submission at the end of each calendar quarter of a Minority Business Utilization Report which includes the dollar amount awarded to minority vendors and minority businesses during the quarter. The report shall be submitted to the DOAS Vendor Relations Office.
7. DOAS will review information contained in the report when it conducts Purchasing Process Reviews.

Section 2: Georgia Income Tax Incentive

1. In an effort to assist minority-owned businesses, the State of Georgia has a law that provides for an income tax adjustment on the state tax return of any company that subcontracts with a Certified minority-owned firm to furnish goods, property or services to the State of Georgia. This includes, but is not restricted to, the construction of any building or structure for the state. Beginning with Tax Year 1985, a corporation, partnership or individual is authorized to subtract from federal taxable income or federal adjusted gross income, ten (10) percent of the amount of qualified payments to Certified minority subcontractors when computing Georgia taxable income. [O.C.G.A. 48-7-38] The Georgia Department of Revenue manages the Tax Incentive Program.
2. A payment to a certified minority subcontractor is a qualified payment if: (1) the payment is for goods, property or services furnished by the minority subcontractor to the taxpayer and delivered by the taxpayer to the State in furtherance of a State contract to which taxpayer is a party, and the payment does not exceed the value of the goods, property or service to the taxpayer; (2) the payment is made during the taxable year for which the subtraction from the federal taxable income or federal adjusted gross income is claimed; or (3) the payment is made to a subcontractor who, at the time of the payment, is Certified as a minority subcontractor by the DOAS Vendor Relations. (Minority is defined as African American, Pacific Islander, Asian American, Hispanic/Latino or Native American). The total amount that may be subtracted from federal taxable income or federal adjusted gross income of any taxpayer in computing Georgia taxable income shall be limited to \$100,000.00 per taxable year.

To be a Certified minority subcontractor, a company must meet the definition of a minority-owned business and meet the following criteria: (1) be organized in the State of Georgia; or (2) report income from your business for Georgia income tax purposes; or (3) if minority stockholders, report earnings for Georgia income tax purposes.

Chapter 12: Ethics in Public Procurement

Section 1: ---- Reserved ----

Glossary

Section 1: Commonly Used Acronyms

| | | | |
|------|--|----------|--|
| ACF | Agency Contract - Fixed | IT | Information Technology |
| ACO | Agency Contract - Open | ITB/IFB | Invitation to Bid/Invitation for Bid (See RFQ) |
| APO | Agency Procurement Officer(s) | PAM | Purchasing Acquisition Manager |
| CAP | Contract Administration Plan | NIGP | National Institute of Governmental Purchasing |
| CDBG | Community Development Block Grants | OFM | Office of Fleet Management |
| CMBE | Certified Minority Business Enterprise | O.C.G.A. | Official Code of Georgia Annotated |
| CMSC | Certified Minority Subcontractor | PO | Purchase Order/Purchase Orders |
| CO | Contracting Officer | PA | Purchasing Agent |
| CTV | Complaint to Vendor | P-Card | Procurement Card |
| DOAS | Department of Administrative Services | PR | Purchase Requisition |
| DPA | Delegated Purchasing Authority | RFP | Request for Proposal(s) |
| EDP | Electronic Data Processing | RFQ | Request for Quote(s) |
| EPA | Environmental Protection Agency | SAC | State Agency Contract |
| FOB | Free on Board | SPDAC | State Purchasing Division Assistant Commissioner |
| GPM | Georgia Procurement Manual | SPD | State Purchasing Division |
| GSBC | Governor's Small Business Center | SWC | Statewide Contract(s) |
| GTA | Georgia Technology Authority | VCO | Vendor Certification Officer |
| IPA | Installment Purchase Agreement | VR | Vendor Relations |

Section 2: Definitions

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| Agency | means all departments, institutions, universities, authorities, commissions and boards, or other units of the State. |
| Approving Official | means an individual who has under his/her purview a number of cardholders. |
| Architectural and Engineering Services | <p>means</p> <ul style="list-style-type: none">- Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.- Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive, planning, program management, conceptual designs, plans and specifications. |
| Best and Final Offer | means the final proposal submitted after negotiations are completed that contains the vendor's most favorable terms for price and services or products to be delivered. |
| Bid Bond | means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds as required, and if the contract is awarded to the bonded (insured) bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount. |
| Business | means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity. |
| Breach of Contract | means failure to fulfill a contract, wholly or in part, without legal excuse. |
| Cardholder | means any individual designated by an agency to be issued a card. |
| Card Controls | means controls coded to each card by the Purchasing Card Program Coordinator (PPC) as required by the issuing agency. Controls available as follows: |

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| | <ul style="list-style-type: none"> - Number of transactions per day/ month/ cycle - Dollar limit per transaction/ day/ month/ cycle - SIC/MCC/MCCG codes blocked - SIC/MCC/MCCG codes allowed (only) |
| Chief Procurement Officer | means the Commissioner who is the head of the central procurement office of the State. (See also State Purchasing Division Assistant Commissioner.) |
| Competition | means the effort of two or more vendors to secure the business of a purchaser by the offer of the most favorable terms as to price, quality, promptness of delivery, and/or service. |
| Competitive Negotiation | means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit proposals in the competitive range. |
| Contract | means a legally binding promise, enforceable by law; an agreement between parties, usually exchanging goods or services for money or other consideration; all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction. |
| Contractor | means any individual or business having a contract with a governmental body. |
| Cost | means actual expenses incurred in delivering a product, service, or construction. |
| Construction Contract | means the purchase of a requirement, which will be met through the building, or construction of something related to real property, usually regarded as “public works”. A special kind of purchase contract involving the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. This does not include routine repair, operation, or maintenance of existing real property. |
| Construction | means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property. |
| Contract Administration | means oversight of all relationships between agencies of the State of Georgia and the contractor relating to contractor performance. This includes performance monitoring, problem or dispute resolution, and closeout. |
| Contracting Officer | means a person with the authority to enter into, administer, and/or terminate contracts, and make related determinations and findings. |

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| Contract Modification | means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of the contract, accomplished by mutual action of the parties to the contract. |
| Contract Specialist | means a person who monitors post award contracts and takes appropriate actions to ensure satisfactory contract progress, to assure compliance with the terms and conditions of the contract, negotiate contract modifications, and to identify and resolve problems that threaten contract performance. |
| Day(s) | unless otherwise stated, "day(s)" means calendar day(s). |
| Debarment | means the exclusion of a person or company from participating in a procurement activity for an extended period of time, as specified by law, because of previous illegal or irresponsible action. |
| Default | means a failure by a party of a contract to comply with contractual requirements. |
| Delegation of Authority | means the conferring of authority, by someone who has it, to another person, in order to accomplish a task. |
| Design Specification | means a specification establishing the characteristics an item must possess, including sufficient detail to show how it is to be manufactured. |
| Designee | means a duly authorized representative of a person holding a superior position. |
| Electronic | means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology. |
| Employee | means an individual drawing a salary from a governmental body, whether elected or not, and any compensated individual performing personal services for any governmental body. |
| End User | means the agency requesting the procurement. |
| Electronic Contact | means the individual designated by an agency or institution to receive the electronic billing and reporting transmissions. |
| Escalation Clause | means a contract provision which permits the adjustment of contract prices by a given amount or percentage if certain specified contingencies occur, such as changes in the contractor's raw material or labor costs. |
| Free on Board Destination | means title changes hands from vendor to purchaser at the destination of the shipment; vendor owns goods in transit and files any claims. Payment of freight charges is determined by contract terms. |
| Governmental Body | means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government, corporation, or other establishment or official of the executive, legislative, or judicial branch of the jurisdiction. |

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| Inter-Governmental | means between state agencies; purchasing transactions between individual State Agencies; purchase of an item by one State Agency from another State Agency and other governmental sources. |
| Issuing Officer | means the Purchasing Agent identified in the solicitation document as the Issuing Officer or an APO authorized to sign Purchase Orders for user agencies. |
| May | denotes the permissive. |
| Minority | means an individual who is a member of a race which comprises less than 50 percent of the total population of the State of Georgia. |
| Minority-owned business | means a business that is owned and controlled by one or more members of a minority race; or a partnership of which at least 51 percent (majority of interest) is owned and controlled by one or more members of a minority race; or a public corporation of which at least 51 percent of all of the common stock is owned by one or more members of a minority race. |
| Performance Bond | means a bond, executed subsequent to award by a successful bidder, to protect the buyer from loss due to the bidder's inability to complete the contract as agreed; secures the fulfillment of all contract requirements. |
| Performance Specification | means a specification setting forth the capabilities and performance characteristics the article must satisfy. |
| Person | means any business, individual, union, committee, club, other organization, or group of individuals. |
| Political Subdivision | means a subdivision of a state which has been delegated certain functions of local government. May include counties, cities, towns, villages, hamlets, boroughs, or parishes. |
| Procurement | means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. |
| Project Manager | means a person who manages contractor activity, receives program status reports, provides technical guidance to the contractor and is responsible for ensuring the terms and conditions of the contract are met. |
| Protest | means a written objection by an interested party to an RFQ or RFP solicitation, or to a proposed award or award of a contract, with the intention of receiving a remedial result. |
| Protestor | means an actual bidder/offeror who is aggrieved in connection with a contract award and who files a protest in accordance with this section. |

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| Public Bid Closing | means the process of opening and reading bids at the time and place specified in the RFQ or RFP and in the presence of anyone who wishes to attend. |
| Public Notice | means an announcement, for example, by newspaper of general circulation or Internet, in reasonable time prior to the date and time of the event, to allow those interested to participate. |
| Purchasing Agency | means any governmental body other than the Chief Procurement Officer, who is authorized by this Code or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts. |
| Purchasing Card Program Coordinator (PPC) | means an individual designated by the ordering agency or institution to perform contract administration within the limits of delegated authority. This individual shall have overall responsibility for the Purchasing Card Program within his/her agency or institution and may determine who the approving officials and cardholders shall be. |
| Reciprocity | means a preference applied against a bidder whose home jurisdiction has preferences. |
| Regulation | means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements. |
| Restrictive Specifications | means specifications that unnecessarily limit competition by eliminating items capable of satisfactorily meeting actual needs, often by requiring features which exceed the minimum acceptable characteristics required for satisfactory performance. |
| Scheduled Buy | means the periodic grouped and combined bidding and one-time purchase of an item, for all requirements and users, for that period, with definite deliveries and quantities specified. |
| Services | means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This includes, but is not limited to, consulting, personal, professional, technical, and purchase-of-client services. This term shall not include employment agreements or collective bargaining agreements. |
| Settlement Contact | means the individual designated by an agency or institution to receive the official invoice and, in some instances, make payments against the official invoice. |
| Shall | denotes the imperative. |
| Signature | means a manual or electronic identifier or the electronic result of an authentication technique to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature. |

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| Site Inspection | means a visit to the actual location where the contract is to be performed by potential bidders or offerors to become familiar with site conditions. |
| Small Business | means a business, which is independently owned and operated. In addition, such business must have either fewer than 100 employees or less than \$1 million in gross receipts per year. |
| Specification | means a description of the physical or functional characteristics, or a description of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery. The SPD shall monitor the use of specifications for supplies, services, and construction required by the State. |
| Standard Industrial Code (SIC) | means a standardized code assigned to products or services based on their commodity types. |
| State Purchasing Division Assistant Commissioner | means the DOAS Commissioner's designee. |
| Substitute | means an item delivered by a vendor, in substitution of the specified and contracted for item on order, without permission or authorization. |
| Supplies | means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land. |
| Using Agency | means any governmental body of Georgia, which utilizes any supplies, services, or construction procured in accordance with jurisdictional regulations. |
| Validation | means the specific dollar amount a requisition has been validated for, to limit the purchase award, based on specific funds availability in an agency budget. |
| Vendor | means one who sells goods or services; a supplier. |

Appendix

Section 1: Standard Forms

Note: All forms that are referenced in the GPM are available on the State Purchasing Website under Resources→SPD Official Forms at

http://statepurchasing.doas.ga.gov/00/channel_title/0,2094,35226973_76322813,00.html

Section 2: Sample Contract Clauses

2.1 Subcontracts/Assignment Clause

Except as may be specifically permitted by the RFP, contractor shall not subcontract, assign or otherwise permit anyone other than contractor personnel to perform any of the work and/or provide any of the deliverables under this contract, or assign any of its rights or obligations hereunder, without the prior written consent of _____; provided, however, contractor may assign this contract to a successor corporate entity upon providing written notice to _____ and agreement by the successor entity to be bound by all of the terms and conditions of the contract. No subcontract which contractor enters into with respect to the performance of work and/or provision of deliverables under the contract shall in any way relieve contractor of any responsibility for any performance under the contract. Contractor shall give _____ immediate notice in writing by registered or certified mail of any action or suit filed against it by any subcontractor, and prompt notice of any claim made against contractor by any subcontractor or vendor which in the opinion of contractor may result in litigation related in any way to this contract with the state of Georgia.

2.2 Payment Clause

For and in consideration of the deliverables provided pursuant to this agreement, _____ shall pay contractor the cost specified in contractor's proposal upon submission by contractor of a monthly invoice that complies with the requirements set forth in the RFP subject to approval by _____, the monthly invoices will be paid by _____ within thirty (30) days of the date the invoice is received by _____.

2.3 Payment Clause (Hourly Billing)

Payment shall be made by _____ to contractor for services, which are actually performed in accordance with this contract. The amounts and terms for payment shall be \$_____ per hour, not to exceed _____ hours per year. Total labor shall not exceed \$_____ dollars and expenses shall not exceed \$_____ dollars. Total contract amount shall not exceed \$_____ dollars. Contractor shall be reimbursed for only those expenses, which shall be deemed by DOAS as actually and necessarily expended in connection with the performance of this contract and evidenced by receipts. Examples of such expenses are transportation, lodging, meals and mileage.

The contract rates specified shall not be increased at any time for the duration of this contract. In no event shall the total payments made hereunder exceed the amount of \$_____ dollars unless amended in writing in accordance with this contract. State vehicles will not be used by contractor personnel for the performance of services

under this contract and contractor shall be responsible for providing transportation necessary to perform services under this contract. The agency will pay contractor for mileage used by contractor personnel in driving their vehicles or contractor's vehicles for the purpose of performing this contract. Contractor shall be responsible for reimbursing contractor personnel for such mileage. Such mileage will be paid at the rates and under the terms and conditions set out in the policies governing agency employees. Charges shall be paid by _____ to contractor based on _____ approval and acceptance of the invoice relating to those charges. Within thirty (30) days after receipt and verification of such invoices, payment shall be made by _____. Invoices shall be submitted in triplicate to:

Title/license of materials produced. Except as otherwise expressly stated in this contract, all material produced by contractor in the performance of this contract, including but not limited to software, charts, graphs, diagrams, video tapes and other project documentation shall belong to the state of Georgia.

Severability. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this contract which is judged, held, found or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this contract, and the remainder of this contract shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate or otherwise change any part of this contract shall not affect any other part of this contract, and the remainder of this contract shall continue to be of full force and effect.

2.4 Limitation of Liability Clause

Except as otherwise provided in this contract, contractor shall not be liable to SPD and the State of Georgia for remote or consequential damages. Except as otherwise provided in this contract, liability to _____ and the State of Georgia for any and all claims of damages arising out of this agreement shall be limited to direct damages and shall not exceed the total amount paid to contractor for the performance of this contract. No limitation of contractor liability shall apply to contractor's liability for loss or damage to State of Georgia equipment or other property while such equipment or other property is in the sole care, custody and control of contractor personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State of Georgia equipment or other property in the care, custody and control of contractor personnel. Contractor further agrees that equipment transported by contractor personnel in a vehicle belonging to contractor, personnel (including any vehicle rented/leased by contractor or contractor personnel) shall be deemed to be in the sole care, custody and control of contractor personnel while being transported.

Nothing in this section shall limit contractor's indemnification liability arising from claims brought by any third party against _____ and the state.

2.5 Termination Clause

- A. _____ reserves the right to terminate this agreement for any reason upon giving sixty (60) days written notice to contractor. In the event that the written notice of termination pursuant to this section states that termination is for the convenience of _____, contractor shall be entitled to payment for 1) reasonable costs incurred through the date of the notice of termination (not the effective date of termination) and 2) charges for deliverables provided to _____ through the effective date of termination but only to the extent that funds designated for the deliverables are available to make payment.
- B. In the event that contractor breaches any term or condition of the agreement or any other event occurs which demonstrates a reasonable likelihood that contractor is unable or unwilling to fulfill its obligations under this agreement, _____ shall be entitled to immediately terminate this agreement. In the alternative, _____, in its sole discretion, may, upon request from contractor, provide contractor with twenty (20) days written notice that contractor may avoid termination of the agreement by curing, to the satisfaction of _____, the breach(es) identified in the written notice within a specified period not to exceed twenty (20) days. The determination of _____ as to the appropriateness of allowing contractor an opportunity to cure, and as to the time allowed for any such cure, shall be conclusive, based on consideration of the circumstances of the breach; on the consequences of the breach as to security and other critical aspects of operations, and, on the time constraints existing at the time of such breach. Any allowance of an opportunity to contractor to cure a specific breach shall not operate as a waiver by _____ of its right to refuse such an opportunity to cure in the event of any other breach, and shall not establish any course of dealing or performance between the parties.
- C. This agreement shall be immediately terminated in the event that any of the following occurs:
1. Contractor becomes insolvent or liquidation or dissolution of contractor begins;
 2. A voluntary or involuntary bankruptcy petition is filed by or against contractor under the U.S. bankruptcy code or any similar petition under any state insolvency law;
 3. An assignment is made by contractor for the benefit of creditors; or
 4. A proceeding for the appointment of a receiver, custodian, trustee or similar agent is initiated with respect to contractor.

- D. All records in the possession, custody or control of contractor, as they relate to the deliverables provided under this agreement, are the property of _____ and will be returned to _____ at no cost upon termination of this agreement.

2.6 Funding Clause

Notwithstanding any other provision of this agreement, the parties hereto acknowledge that _____, as an agency of the State of Georgia, is prohibited from pledging the state's credit. In the event that the source of payment for the total obligation no longer exists or is insufficient with respect to the deliverables, this agreement shall terminate without further obligation of _____ as of that moment. The determination of _____ of the events stated above shall be conclusive.

2.7 Contractor Accounting Requirements Clause

Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this agreement (collectively the "records") to the extent and in such detail as will properly reflect all payments received under this agreement. Contractor's accounting procedures and practices shall conform to GAAP and the costs properly applicable to the agreement shall be readily ascertainable there from.

Records retention clause

Contractor agrees to make available at all reasonable times during the period set forth below any of the records of the contracted work for inspection or audit by any authorized representative of DOAS or the Georgia state auditor. Contractor shall preserve and make available its records for a period of five (5) years from the date of final payment under this agreement, and for such period, if any, as is required by applicable statute, by any other paragraph of the RFP or this agreement. If the agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement. Records which relate to appeals, litigation, or the settlements of claims arising out of the performance of this agreement, or costs and expenses of any such agreement as to which exception has been taken by the state auditor or any of his duly authorized representatives, shall be retained by contractor until such appeals, litigation, claims or exceptions have been disposed of.

Compliance with all Applicable Laws and Standards

In the performance of all work under this agreement, contractor shall comply with any and all laws and ordinances, and any and all rules, regulations and orders of public authorities hereto, whether federal, state or local. Contractor shall also comply with all applicable standards, policies and guidelines of the _____, or of any other organization or agency which govern the operations of the _____, including but not limited to those specified in the RFP.

2.8 Insurance Clause Sample 1

The following insurance coverage shall be obtained and maintained by contractor throughout the duration of the agreement. Except as otherwise expressly provided herein, all policies must be on an "occurrence" basis. All policies shall provide that contractor and its insurer(s) waive any right of subrogation against _____ and the State of Georgia.

A. Insurance Certificate:

Contractor shall procure and maintain insurance which shall protect the contractor and the state from any claims for bodily injury, property damage, or personal injury which may arise out of operations under the agreement. Contractor shall procure the insurance policies at the contractor's own expense and shall furnish the state an insurance certificate listing the state as certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the contractor includes contractual liability coverage to protect the state. In addition, the insurance certificate must provide the following information:

1. Name and address of authorized agent
2. Name and address of insured
3. Name of insurance company (licensed to operate in Georgia)
4. Description of coverage in standard terminology
5. Policy period
6. Limits of liability
7. Name and address of certificate holder
8. Acknowledgment of notice of cancellation to the state
9. Signature of authorized agent
10. Telephone number of authorized agent
11. Details of policy exclusions in comments section of insurance certificate

B. Contractor also agrees to provide an insurance certificate to document that the following types of insurance coverage have been purchased by the contractor:

1. Workers' compensation insurance (occurrence) in the amounts of the statutory limits as established by the general assembly of the State of Georgia. (A self-insurer must submit a certificate from the Georgia board of workers' compensation stating the contractor qualifies to pay its own workers' compensation claims.) In addition, contractor shall require all subcontractors occupying the premises or performing work under this agreement to obtain an insurance certificate showing proof of workers' compensation coverage.

2. Commercial general liability policy (occurrence), to include contractual liability. The commercial general liability policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the commercial umbrella policy required in this agreement.
3. Business auto policy (occurrence), to include but not be limited to any owned, non-owned and hired auto liability. The business automobile policy shall have dollar limits sufficient to insure that there is no gap in coverage between this policy and the commercial umbrella policy required in this agreement.
4. Commercial umbrella policy (occurrence), which must provide the same or broader coverage than those provided for in the above commercial general liability and business auto policies. Policy limits for the commercial umbrella policy shall have an annual aggregate limit of \$_____.
5. Professional liability policy (claims made) which will be required on all privately contracted medical professionals (for example, physicians, nurses, psychiatrists, dentists, and pharmacists). Policy limits shall be \$_____ annual aggregate. This policy (and any required tail coverage) must provide and maintain a retroactive date to the date on which the contract commences as set forth in paragraph _____. When the contract is terminated or otherwise expires, the contractor must provide a five-year tail for reporting claims.

The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to _____. Certificates of insurance showing such coverage to be in force shall be filed with _____ prior to commencement of any work under this agreement. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to _____. All such coverage shall remain in full force and effect during the initial term of the agreement and any renewal or extension thereof.

2.9 Insurance Clause Sample 2

Insurance. The following requirements shall be adhered to by contractors throughout the duration of the contract, and as may otherwise be specified herein. Contractor shall procure and maintain insurance, which shall protect the contractor and the state from any claims for bodily injury, property damage, or personal injury which may arise out of operations under the contract. Contractor shall procure the insurance policies at the contractor's own expense and shall furnish the state an insurance certificate of the coverage required in this section listing the state as certificate holder. In addition, the insurance certificate must provide the name and address of the insured, name, address, telephone number and signature of the authorized agent; the name of the insurance company (licensed to operate in

Georgia); a description of coverage in detailed standard terminology (including policy period, limits of liability, exclusions and endorsements); and, an acknowledgment that notice of cancellation is required to be given to the state. Contractor is required to obtain and maintain the following types of insurance coverage for the duration of the contract:

A. Workers' Compensation Insurance:

The purpose of Workers' Compensation Insurance is to insure the statutory limits as established by the general assembly of the state. (Note: A self-insurer must submit a certificate from the Georgia state board of workers' compensation stating the contractor qualifies to pay its own workers' compensation claims.) The workers' compensation policy must include coverage with employer's liability limits of:

| | |
|---------------------------|---------------------------|
| Bodily injury by accident | \$500,000 each accident |
| Bodily injury by disease | \$500,000 each employee |
| | \$1,000,000 policy limits |

Contractor shall require all subcontractors performing work under this contract to obtain an insurance certificate showing proof of workers' compensation coverage.

B. Commercial General Liability Policy:

| | |
|-------------------------|----------------------------|
| Combined single limits: | \$1,000,000 per person |
| | \$3,000,000 per occurrence |

The commercial general liability policy shall include contractual liability coverage to protect the state and must be on an "occurrence" basis.

C. Business Automobile Liability Policy:

| | |
|-------------------------|----------------------------|
| Combined single limits: | \$1,000,000 per person |
| | \$3,000,000 per occurrence |

D. Malpractice/professional liability policy with EDP and errors and omissions coverage:

Notwithstanding any other provisions herein to the contrary, the malpractice/professional liability policy with EDP and errors and omissions coverage may be on a "claims made" basis. It must provide liability limits of:

| | |
|--|----------------------------|
| | \$3,000,000 per occurrence |
|--|----------------------------|

Except as otherwise expressly stated herein, all policies must be on an "occurrence" basis.

The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to DOAS. Certificates of insurance showing such coverage to be in force shall be filed with DOAS no later

than fourteen (14) calendar days after the commencement of any work under this contract. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to DOAS. It shall be the responsibility of contractor to require any subcontractor to secure the same insurance coverage as prescribed herein for contractor, and to obtain a certificate or certificates evidencing that such insurance is in effect. In addition, contractor shall indemnify and save harmless DOAS from any liability arising out of contractor's or subcontractor's untimely failure in securing adequate insurance coverage as prescribed herein. All such coverage shall remain in full force and effect during the initial term of the contract and any renewal or extension thereof.

2.10 Indemnification Clause

Contractor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the State of Georgia (including the state tort claims trust fund), _____, DOAS, their officers and employees (collectively "indemnitees") of and from any and all claims, demands, liabilities, loss, costs or expenses for any loss or damage for bodily injury (including but not limited to death), personal injury and property damage caused by any act or omission of contractor, its employees, agents, subcontractors or any other party acting on behalf of contractor (collectively, the "indemnity claims").

This indemnification extends to the successors and assigns of the contractor, and this indemnification and release survives the termination of this agreement and shall also survive the dissolution or, to the extent allowed by law, the bankruptcy of the contractor.

If and to the extent such damage or loss as covered by this indemnification is covered by the state tort claims fund or any other self-insurance funds maintained by the Department of Administrative Services (collectively, the "funds"), the contractor agrees to reimburse the funds for such funds paid out by the funds. To the full extent permitted by the constitution and the laws of the State of Georgia and the terms of the funds, the contractor and its insurers waive any right of subrogation against the State of Georgia, the indemnitees, and the funds and insurers participating thereunder, to the full extent of this indemnification.

Contractor shall, at its expense, procure the insurance policies required by this agreement, in coverage amounts as specified in this agreement, with endorsements waiving rights of subrogation against the state, the indemnitees, the funds and insurers participating thereunder.

Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the indemnitees. No settlement or compromise of any claim, loss or damage asserted against indemnitees shall be binding upon indemnitees unless expressly approved by the indemnitees.

2.11 Drug-Free Workplace Clause

Contractor hereby certifies as follows:

1. Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this agreement.
2. If contractor has more than one employee, including contractor, contractor shall provide for such employees a drug-free workplace, as defined under Official Code of Georgia Annotated ("O.C.G.A.") sections 50-24-2(5) and 50-24-3(b), throughout the duration of this agreement.
 - a. Contractor will secure from any subcontractor hired to work in a drug-free workplace the following written certification:
 - b. As part of the subcontracting agreement with (contractor's name), (subcontractor's name) certifies to contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this agreement pursuant to paragraph 7 of subsection b of O.C.G.A. 50-24-3.
 - c. Contractor may be suspended, terminated, or debarred if it is determined that:
 - d. Contractor has made false certification hereinabove; or
 - e. Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia section 50-24-3.

2.12 Taxes Clause

Contractor will forthwith pay all taxes lawfully imposed upon it with respect to this agreement. By this paragraph, _____ makes no representation whatsoever as to the liability or exemption from liability of contractor to any tax imposed by any governmental entity.

The RFP (and any documents referenced therein) and contractor's proposal (including any best and final offer) are incorporated into this agreement by reference and form an integral part of this agreement. In the event of a conflict between the language of the RFP and the contractor's proposal, the language in the RFP shall govern. In the event of a conflict between the language of this agreement and any other document or instrument incorporated herein, the language of this agreement shall govern.

2.13 Cure and Cover Clause

If contractor fails or SPD reasonably concludes that there is a reasonable likelihood that contractor will not be able to timely perform all of its obligations under this contract, SPD may (in addition to any other contractual, legal or equitable remedies) proceed to take any of the following actions after five (5) days written notice to contractor:

- A. Withhold any monies then or next due to contractor; or
- B. Terminate the contract and obtain the deliverables (or equivalent) or portion thereof (or equivalent) from a third party, pay the third party for same, and withhold the amount so paid from any money then or thereafter due contractor

and hold contractor liable for any amounts paid to the third party (or parties) to the extent that withholding payments to contractor does not cover SPD's costs of cover.

- C. If _____ determines that the above nonexclusive remedies are impracticable or would cause undue delay, _____ may allow contractor to continue performance under this contract but assess liquidated damages in the amount of 1% of the total contract price for each day that contractor has failed to meet any requirement of the contract.

2.14 Reporting Requirements Clause

In addition to any reporting requirements in the RFP, contractor shall provide monthly reports to SPD to report the status of contractor's performance under the contract and contractor's progress toward fulfilling the requirements of the contract.

2.15 Relationship of the Parties Clause

Contractor warrants that all work performed by or on behalf of contractor under this contract shall be performed as an independent contractor. Contractor shall be responsible for compliance with all laws, rules and regulations involving their respective employees, including (but not limited to) employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages and contractor agrees to indemnify and hold harmless _____ and the State of Georgia from any loss resulting from the breach of these warranties. This contract shall not be construed so as to create a partnership or joint venture between contractor and the state or any of its agencies.

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